159 U.S. 293

159-293

AGREED RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1894.

No. 324.

THE DR. S. A. RICHMOND NERVINE COMPANY, APPELLANT,

vs.

SAMUEL A. RICHMOND.

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE SOUTHERN DISTRICT OF ILLINOIS.

FILED OCTOBER 13, 1891.

(14,897.)

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a In the Supreme Court of the United States, October Term, 1894.

DR. S. A. RICHMOND NERVINE CO., Complainants.
vs.
SAMUEL A. RICHMOND, Defendant. } No. 324.

Stipulation.

In conformity with the rule requiring that only so much of the record be printed as is necessary to present to the court the issues involved and in compliance with said rule we hereby agree that the parts of the record indicated below may be omitted and that only the parts be printed that are so designated, with the stipulation, however, that if, when the record is printed, it is discovered that any part necessary and essential to the issue has been omitted it shall be printed as supplementary or stipulated into the record.

The following parts, as indicated, are to be printed or omitted:

Print from page 1 to 11, both inclusive.
Omit from page 12 to 37, "
Print from page 38 to 52, "
Omit from page 53 to 62, "
Print from page 63 to 90, "
Omit from page 91 to 101, "
Print from page 102 to 120, "
Omit from page 121 to 136, "
Print from page 137 to 160, both inclusive.

b Omit from page 161 to 176, both inclusive, including Exhibit B, which is a newspaper or circular, between pages 160 and 161.

Omit in the original record from page 177 to 466, inclusive, and in place thereof print epitome No. 1, numbered, in red ink, from page 1 to 29, inclusive.

Omit from page 467 to 520, both inclusive.
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Print from page 1353 to 1363, "
Omit from page 1364 to the words "hearing, May 13, 1889,"

where they last appear on page 1392, immediately preceding the words "United States Patent Office," both inclusive.

Print commencing with the words "United States Patent Office," at the middle of said page 1392, to and end on page 1421, inclusive.

Omit all on page 1421 after the signature of "James A. Richmond" to page 1437, inclusive.

Omit from page 1438 to 1499, both inclusive.

Omit from page 1500 to 1571, inclusive.

Omit in the original record from page 1500 to 1571, inclusive, and print in lieu thereof epitome No. 3, numbered, in red ink, from page 65 to 70, inclusive.

Print from 1572 to 1577, inclusive.

BENJ. BUTTERWORTH &
JULIAN C. DOWELL,
Att'gs for Appellant.
WM. HENRY BROWNE,
Solicitor for Appellee.

[Endorsed:] Case No. 14,897. Supreme Court U. S., October term, 1894. Term No. 324. The Dr. S. A. Richmond Nervine Co., app't, *vs.* Samuel A. Richmond. Stipulation as to printing record. Filed April 1, 1895.

1 Pleas in the circuit court of the United States of America for the southern district of Illinois, held at the city of Springfield, in said district, before the Hon. William J. Allen, district judge of said district, and in the absence of the Hon. Walter Q. Gresham, judge of the seventh judicial circuit, on Monday, the tenth day of November, at the June term of said court, in the year of our Lord one thousand eight hundred and ninety, and of our Independence the one hundred and fifteenth year.

JAMES T. JONES, *Clerk.*

DR. S. A. RICHMOND NERVINE COMPANY	In Chancery. Original Bill.
vs.	
SAMUEL A. RICHMOND.	
SAMUEL A. RICHMOND	Cross-bill.
vs.	
DR. S. A. RICHMOND NERVINE COMPANY.	

SOUTHERN DISTRICT OF ILLINOIS, *ss.*:

Be it remembered that heretofore, to wit, on the twenty-second day of April, in the year of our Lord one thousand eight hundred and eighty-nine, came the complainant, The Dr. S. A. Richmond Nervine Company, a corporation incorporated and organized under and by virtue of the laws of the State of Missouri, by Messrs. Huston & Parrish and Banning & Banning & Payson, its solicitors, and filed in the clerk's office of the circuit court of the United States for

the southern district of Illinois its bill of complaint against
2 Samuel A. Richmond, defendant, a citizen of the southern district of the State of Illinois; which said bill of complaint is in the words and figures following, to wit:

Bill of Complaint.

To the judges of the circuit court of the United States for the southern district of Illinois:

The Dr. S. A. Richmond Nervine Company of Saint Joseph, Missouri, a corporation duly incorporated and organized under and by virtue of the laws of the State of Missouri and a citizen of said State, brings this its bill against Samuel A. Richmond, resident of the county of Douglas, State of Illinois, and a citizen of said State of Illinois, and for cause thereof your orator complains and states that heretofore and prior to the 20th day of December, 1877, the said Samuel A. Richmond, being then engaged in the business of making and selling a medicine known as "Samaritan nervine," a medicine for the relief of epileptic fits and all other nervous diseases, adopted and used as his trade-mark on such medicine the figure of a man in an epileptic fit falling backward, with his arms extended and his cane and hat dropping to the ground, with the word "trade" printed in small capitals on the right of said figure and the word "mark" printed in small capitals on the left side of said figure. A copy or specimen of which said trade-mark, adopted and used by said Samuel A. Richmond in his said business and on his said medicine herein aforesaid, as registered in the United States Patent Office March 26th, 1878, is hereto attached, marked Exhibit "A," for the purpose of illustrating and explaining the said trade-mark, so used and adopted by the said Samuel A. Richmond as aforesaid.

Your orator further represents to your honors that after the said Samuel A. Richmond had used and adopted said device as and for his trade-mark in his business the "Dr. S. A. Richmond
3 Medical Company" was incorporated and organized under and by virtue of the laws of the State of Missouri and succeeded the said Samuel A. Richmond in the business of manufacturing and selling the medicine aforesaid on which said trade-mark was used, and acquired all the right, title, and interest in and to said trade-mark theretofore owned and enjoyed by said Samuel A. Richmond.

Your orator further represents to your honors that — the incorporation of the "Dr. S. A. Richmond Medical Company" about the latter part of the year 1883 or early part of the year 1884, the particular date of which your orator is unable to state, said "Dr. S. A. Richmond Medical Company" adopted and used, in connection with the trade-mark aforesaid, an engraved portrait of Dr. S. A. Richmond, placed on the outside wrapper in which the bottles of medicine was incased, forming the front side of bottle, and on circulars and other mediums of advertising, and was also blown in

the bottles and photographed on paper and pasted on opposite side of the bottles: the words "new style" printed in small capitals on the upper right-hand corner of said outside wrapper, and the word "adopted" and figures "1884" printed in same manner in upper left-hand corner of said wrapper; also the portrait of said Dr. S. A. Richmond, surrounded by four globes, was placed on outside wrapper on the back of said bottles.

A copy or specimen of said portrait and globes as used, as aforesaid, by said "Dr. S. A. Richmond Medical Company" is hereto attached and marked Exhibit "B" for the purpose of illustration and explanation.

Your orator further represents to your honors that on or about the 13th day of May, 1884, the said "Dr. S. A. Richmond Medical Company" made an assignment for the benefit of its creditors under and pursuant to the laws of the said State of Missouri.

4 That said assignment was duly and lawfully made, prosecuted, and wound up according to law. A copy of the resolution of said company authorizing the president thereof to make such assignment is hereto attached, marked Exhibit "C," and made a — of this bill.

That by order of the court in said proceedings of assignment the formula for compounding said medicine, the good will of the business, and the trade-mark and all other designs used by the said "Dr. S. A. Richmond Medical Company," including the portrait, and portrait connected with globes used by said company as herein aforesaid and for the purpose of advertising said medicine, *was* duly and lawfully sold by the assignee of said "Dr. Richmond Medical Company," and that James A. Richmond became the purchaser thereof; that afterwards your orator, "The Dr. S. A. Richmond Nervine Company" was incorporated and organized under and by virtue of the laws of the State of Missouri, and, by purchase of and transfer by said James A. Richmond, succeeded the "Dr. S. A. Richmond Medical Company" in the manufacture and sale of said medicine, the Samaritan nervine, and acquired all the right, title, and interest in and to said personal property, formula, trade-mark, and all devices used in connection therewith, as aforesaid, theretofore owned, adopted, used, and enjoyed by the "Dr. S. A. Richmond Medical Company," and that thereby your orator became and now is the sole, exclusive, and rightful owner of said property, formula, trade-mark, and devices adopted and used in connection therewith, and is entitled to the sole and exclusive use and enjoyment of the same, and is now and for several years last *passed* has been engaged in making and selling said Samaritan nervine and using thereon and in connection therewith the trade-mark and portrait of said Dr. Richmond and said other devices in connection therewith, as hereinbefore mentioned and set out.

5 Your orator further represents to your honors that after your orator had succeeded to all of the rights of the "Dr. S. A. Richmond Medical Company" and had engaged in the business of making the said medicine aforesaid under said trade-mark, etc., and about May 1st, 1884, it was adopted as and for an additional

trade-mark for medicine for relieving epileptic fits and other nervous diseases, said portrait of said Dr. S. A. Richmond with the word "trade" printed in small capitals on the left of said portrait, and the word "mark" printed in small capitals on the right of said portrait. A copy or specimen of which said trade-mark so used and adopted by your orator as registered in the United States Patent Office March 6th, 1888, is hereto attached, marked Exhibit "D," for the purpose of illustrating and explaining the said trade-mark so adopted by your orator.

That after your orator acquired the said trade-mark as aforesaid it has been extensively engaged in manufacturing and selling said medicine under said trade-marks and said other devices used in connection therewith: that it has extensively advertised said medicine under said trade-marks and devices used in connection therewith, and has expended large sums of money in so advertising said medicine and bringing it to the knowledge of the public; that said medicine under said trade-marks, etc., has acquired an extensive and valuable reputation all over the United States and in foreign countries through the efforts and labors of your orator and its large expenditures of money in advertising and pushing the sale of said medicine under said trade-marks, etc., and that your orator has acquired a valuable property interest in and to said trade-marks that makes there exclusive enjoyment in your orator of great pecuniary value and importance.

6 Your orator, in further complaint, further represents to your honors that notwithstanding the long use and enjoyment of said trade-marks and the portrait, etc., used in connection therewith as aforesaid, which your orator charges and avers was used by the "Dr. S. A. Richmond Medical Company" and by the assignee thereof was sold to your orator and used by it continuously from thence to the present time with the knowledge and consent of the said Dr. S. A. Richmond, and notwithstanding its rights to the exclusive use and enjoyment of said trade-marks, etc., the said defendant, Samuel A. Richmond, for the purpose of defrauding your orator, well knowing the premises and the rights and privileges secured to your orator by the use and adoption of said trade-marks, and to appropriate to himself the profits, benefits, and advantages which would have accrued to it from the exclusive use of said trade-marks, etc., within the district aforesaid, has made what he styles "Samaritan nervine," and is now wrongfully engaged in making the same in Tuscola, county of Douglas and State of Illinois, unlawfully, wrongfully, and deceitfully wrapped and packed such so-called "Samaritan nervine" similar to that used by your orator, and is now wrongfully making and wrongfully and deceitfully wrapping and packing said so-called "Samaritan nervine" in packages similar to that used by your orator and have used thereon both the trade-marks aforesaid and the devices connected therewith as aforesaid, in direct violation of the exclusive right to use the same vested in your orator, and that he has by means of said trade-marks and devices sold large quantities of so-called "Samaritan nervine" throughout the United States and in said district where your orator

is selling its nervine under said trade-marks aforesaid in direct infringement of said trade-marks. The fact that said defendant is engaged in the manufacture and sale of said medicine and using said trade-marks and devices in connection therewith will more fully appear by defendant's affidavit filed in the Patent Office of the United States, a copy of which is hereto attached, marked Exhibit "E," and made a part of this bill.

7

Your orator further states that what amount of goods said defendant, S. A. Richmond, has sold under said trade-marks it is unable to state nor does it know but upon information and belief, but your orator avers that he has sold large quantities of the same, using said trade-marks, is now making said so-called "Samaritan nervine" and using said trade-marks thereon, and *has* received and *are* receiving for such sales great gains and profits, but to what amount your orator is ignorant and cannot set forth, except that it alleges that such gains and profits amount to more than five thousand dollars, exclusive of costs, and that your orator has been damaged to an amount exceeding five thousand dollars, exclusive of costs.

Your orator further represents to your honors that said Samuel A. Richmond, the defendant herein, well knowing the exclusive right of your orator to make and vend said medicine, "Samaritan nervine," and the exclusive right and privilege of your orator to use said trade-marks and devices in the sale of said medicine and in connection therewith, and in the advertisement of the same, and the great benefit secured to your orator by the use and adoption of said trade-marks, intending to injure your said orator and appropriate to himself the profits, benefits, and advantages which would accrue to it from the exclusive use of said trade-marks within the district aforesaid, has wrongfully and fraudulently applied to the Patent Office of the United States of America for registration of said portrait of said Dr. S. A. Richmond adopted and long used by your orator as its trade-mark aforesaid as and for his trade-mark; all of which will fully appear by copy of his statement and declaration filed in the Patent Office of the United States of America, which is hereto attached, marked Exhibit "F," and made part hereof; that said Samuel A. Richmond has no interest in the formula for compounding the medicine in suit nor is he entitled to adopt or use said portrait as his trade-mark.

8

Your orator further represents to your honors that said Samuel A. Richmond is wholly insolvent and worthless, and that he would be unable to pay any damages that your orator might sustain by means of the premises aforesaid; that your said orator has no speedy or adequate remedy at law in the premises, and it can only be protected in its several rights herein by the equitable interposition of this court.

Your orator prays that the defendant may be required to make a disclosure of all such sales and profits, and that *they* may be required to account with and pay over to your orator all the damages it may have sustained and profits which he has received from

such unlawful use of said trade-mark, and that *they* may be enjoyned provisionally and preliminarily pending a hearing herein.

Wherefore, the premises considered, your orator prays that upon a final hearing the defendant be enjoyned and restrained by decree from in any manner making and selling said medicine, Samaritan nervine, under the name of Samaritan nervine or under any other name whatever, and from in any manner using said trade-marks or devices enumerated therewith or either of them or any trade mark or marks so nearly resembling them as will be calculated to deceive on any of *their* preparations and from infringing upon your orator's exclusive right to use the same; that the defendant be enjoined and restrained from the further prosecution of the
9 registration of said portrait as his said trade-mark before the Patent Office of the United States, and that he be required to account with and pay over to your orator all damages sustained by it and profits by him received from such unlawful use of said trade-marks.

That your orator may have such other and further relief in the premises as equity and good conscience will allow and as to this court shall seem meet; and may it please your honors to grant unto your orator a writ of subpœna of the United States of America under the seal of this honorable court, directed to the defendant, Samuel A. Richmond, commanding *them* to appear in this honorable court, then and there to answer all and singular the premises and to stand to and perform and abide such further orders, directions, and decree as may be made against *them*; and your orator will ever pray.

THE DR. S. A. RICHMOND
NERVINE COMPANY,
By M. J. DRAUT, *Secretary.*

HUSTON & PARRISH AND
BANNING & BANNING & PAYSON,
Solicitors for Complainant.

STATE OF MISSOURI, } ss:
County of Buchanan, }

Michael Draut, being duly sworn, says that he is secretary of "the Dr. S. A. Richmond Nervine Company" of St. Joseph, in the State of Missouri, and that he is custodian of its papers and conversant with its business, and on behalf of said corporation and as its agent and officer he says that the foregoing bill is true, as he — informed and believes.

M. J. DRAUT.

Subscribed and sworn to before me this — day of April, 1889.
T. H. PARRISH,
Notary Public.

Commission expires Jan., 18*9*.

(Indorsed:) Filed April 22, 1889. James T. Jones, clerk.

10 "A."

UNITED STATES PATENT OFFICE.

SAMUEL A. RICHMOND, of St. Joseph, Missouri.

Trade-mark for a Medicinal Preparation.

Statement of Trade-mark No. 5788, registered March 26, 1878; application filed December 20, 1877.

To all whom it may concern:

Be it known that I, Samuel A. Richmond, domiciled in the United States and residing and doing business at the city of St. Joseph, in the county of Buchanan and State of Missouri, have adopted for my use a trade-mark for a medicinal preparation, of which the following specification is a full, clear, and exact description.

My trade-mark consists, essentially, of the figure of a man, as shown in the accompanying fac-simile, the same being represented as in an epileptic fit, falling backward, with his arms extended and his cane and hat dropping to the ground. The words "trade-mark," printed in small capitals, are shown, the former on the right and the latter on the left side of said figure.

This trade-mark I have used in my business for four years last past.

The class of merchandise to which the trade-mark is appropriated is a proprietary medicine, and the particular description of goods upon which I use my said trade-mark is known as "Dr. Richmond's Samaritan nervine or great nerve-conqueror," a medicine for the relief of epileptic fits and for all nervous diseases.

It is put up in six-ounce flat glass bottles. I have been accustomed to print said mark in black ink upon labels, which I afterward paste upon each bottle containing the medicine.

SAMUEL A. RICHMOND.

Witnesses:
JAMES W. STRONG.
R. W. BLACKBURN.

(Indorsed:) Filed April 22, 1889. James T. Jones, clerk.

11 "C."

ST. JOSEPH, MO., *May* 13, 1884.

At a meeting of the board of directors of the Dr. S. A. Richmond Medical Company, called by its president at eight o'clock a. m. of this day, there were present S. A. Richmond, president and a director of this company, and L. A. Richmond, a director of this company, Winslow Judson, the secretary and remaining director of this company, being absent.

On motion, Michael J. Draut was appointed sec'ty *pro tem.* The president stated that he had ascertained that this company was

insolvent and unable to meet its obligations and debts, and that he had called this meeting *into consideration* the propriety of making an assignment of the company for the benefit of its creditors, and that he had on the 12th day of May, 1884, called at the residence of the said Winslow Judson to notify him in writing of the time and object of a call for this meeting, and that he, the said S. A. Richmond, was informed by the wife of Winslow Judson that said Judson was absent from the city and in New York and would not return for several days.

The president recommended that an assignment be made of the effects of this company under the provisions of chapter five of the Revised Statutes of Missouri of 1879; whereupon J. A. Richmond offered the following resolution and order, to wit: Resolved, That Dr. S. A. Richmond, president of the company, be, and he is hereby, authorized, empowered, and directed to make assignment of the property and effects of this corporation to John F. Tyler for the benefit of the creditors of this corporation under the provisions of chapter five of the Revised Statutes of Missouri of 1879; which resolution being put to vote and the ayes and noes being called thereon, S. A. Richmond and J. A. Richmond voted aye, noes none, and said resolution was adopted and ordered made matter of
12-37 record. The board then adjourned subject to the call of the president.

S. A. RICHMOND, *President.*

MICHAEL J. DRAUT,
Sec'y pro Tem.

38 Now, afterwards, to wit, on the eighth day of May of the year last aforesaid, came the defendant, Samuel A. Richmond, by his solicitors, and filed in the clerk's office of said court his answer to the original bill in this cause, and also at the same time filed his cross-bill herein; which said answer to original bill and cross-bill, with exhibit thereto, are as follows, to wit:

Answer to Original Bill.

In the Circuit Court of the United States for the Southern District of Illinois.

THE DR. S. A. RICHMOND NERVINE COMPANY } In Equity. Answer.
vs.
SAMUEL A. RICHMOND. }

The answer of Samuel A. Richmond, defendant, to the bill of complaint of the Dr. S. A. Richmond Nervine Company.

This defendant, now and at all times hereafter saving and reserving unto himself all benefit and advantage of exception which can or may be had or taken to the many errors, uncertainties, and other imperfections in the said complainant's said bill of complaint contained, for answer thereunto or *with* so much and such parts

thereof as this defendant is advised is or are material or necessary for him to make answer unto, *this defendant* answering, saith:

1. This defendant admits that prior to the 20th day of September, 1877, he was engaged in the business of making and selling a medicine known as "Samaritan nervine," and that he then adopted and used as his trade-mark for said medicine the figure of a man falling in an epileptic fit, as described in said bill, and that the "Dr. S. A. Richmond Medical Company," therein named, subsequently

39 acquired title to said trade-mark.

2. This defendant, further answering, denies that the said "Dr. S. A. Richmond Medical Company" was organized in the latter part of the year 1883 or the early part of the year 1884, as in said bill alleged, but says that said "medical company" was organized on or about the first day of May, 1882.

3. This defendant, further answering, denies that the said "Dr. S. A. Richmond Medical Company" adoptes and uses in connection with the trade-mark aforesaid an engraved portrait of Dr. S. A. Richmond (meaning this defendant), placed on the outside wrapper in which the bottles of said medicine *were* enclosed, as in said bill alleged, or otherwise; and this defendant, further answering, denies that the said portrait was placed on circulars or other medicines of the advertis-ment of the said medical company or blown in the bottle of the said company or photographed on paper and pasted on the outside of said bottle, as is alleged in said bill; and this defendant, further answering, denies that the words "new style" were printed in small capitals in the upper right-hand corner of said outside wrapper, and further denies that the word "adopted" and figures "1884" were printed in the same manner in the left-hand corner of said wrapper, and also denies that the portrait of said Dr. S. A. Richmond (meaning this defendant), surrounded by four globes, was placed on the outside wrapper of said bottle, as alleged in said bill; and *that* defendant, further answering, denies that the said "medical company" ever used in any manner an engraved portrait of said Dr. S. A. Richmond, and further denies that said portrait was ever placed on any of the circulars or any of the advertising medicines of said company, and denies that the said portrait was ever blown in any of the bottles of said medical

40 company, or that it was ever photographed on paper and pasted on the outside of any of said bottles; and this defendant, further answering, denies that said medical company ever used or printed the words "new style" in any manner on any part of said wrappers or elsewhere, and further denies that said medical company ever used or printed the word "adopted" and the figures "1884" in any part of said wrappers or elsewhere, and further denies that said medical company ever adopted and used the portrait of said Dr. S. A. Richmond surrounded by four globes (as therein named) or placed the same on the outside of said wrapper or on the back of said bottles or on any part thereof.

4. And this defendant, further answering, says that he admits that on or about the 13th day of May, 1884, the said medical company made an assignment for the benefit of its creditors, and

further admits that by order of the court in which said assignment was considerd the formula for compounding the said medicine and the good will of the business of said medical company and the said trade-mark of a man falling as in a fit was in form sold or attempted to be transfer-ed and sold by the assignee of said company, but as to whether said sale was lawful or not he neither admits nor denies, but leaves the same for the consideration of the honorable court; and this defendant, further answering, denies that the portrait of the said Dr. S. A. Richmond and his portrait surrounded by four globes or either of them was ever included in said assignment or sold or pretended to be sold by said assignee of said medical company to said James A. Richmond or any other person or persons, and denies that said medical company or said James A. Richmond or said assignee ever owned said portrait trade-mark or said portrait with four globes trade-mark.

5. And this defendant, further answering, says that no person or persons or corporation or corporations whatsoever has or had
41 owned either of said last-mentioned trade-marks or any interest therein or the right to use the same, except with the license and leave of this defendant, the lawful owner thereof, and denies that said James A. Richmond ever became the purchaser thereof, either as assignee under order of said court or otherwise.

6. And this defendant admits that the complainant, The "Dr. S. A. Richmond Nervine Company," was organized, as he has been informed, but whether the organization was in accordance with the laws of the State of Missouri he neither admits nor denies, but leaves the complainant to make such proof thereof as it may be advised or necessary, and this defendant further alleges that said organization was made on or about the eleventh day of December, 1884.

7. And the defendant, further answering, denies that the said complainant, The Dr. S. A. Richmond Nervine Company, ever succeeded by purchase of and transfer by the said James A. Richmond to the said "medical company," as alleged in said bill, and further denies that said complainant ever received from said James A. Richmond by purchase or otherwise the said portrait trade-mark or the said four-globe trade-mark, and further denies that the said complainant is the sole, exclusive, and rightful owner of said portrait trade-mark or said portrait with four globes trade-mark or either of them, and denies that it is entitled to the sole and exclusive use and enjoyment of the same or either of them.

8. And this defendant, further answering, admits that the said complainant has been engaged in making and selling said Samaritan nervine for several years last past, to wit, ever since on or about the eleventh day of December, 1884, and that ever since that time it has used the said portrait trade-mark and the said four-globe trade-mark on its goods; but, further answering, says that from said date until on or about the 1st day of January, 1886, he
42 was the general manager of said "Dr. S. A. Richmond Nervine Company," and had exclusive charge of the manufacturing of said medicine, which was his sole invention and made accord-

ing to his recipe, and, being the exclusive owner of said portrait trade-mark and said four-globe portrait, he applied and affixed the said trade-mark to said medicine for the express purpose of authenticating the genuineness of said medicine as his manufacture, so that the public and purchasers might at a glance recognize the same as made by him or under his supervision; that on or about the date last aforesaid he, this defendant, had an aberration of mind, and on that account was incapacitated from doing business from that time until he was committed to an asylum for the insane or hospital for the insane of mind; that he was so committed on or about the 21st day of August, 1886, and that he was finally released therefrom in the month of January, 1889, and that from the time he was so committed the manufacture of said medicine by said complainant ceased to be the genuine medicine that it purported to be and ceased to be the nervine made in conformity with this defendant's invention, and the continued use by the complainant of the two-portrait trade-mark aforesaid convey a meaning that is not in accordance with truth; that, having fully recovered his mental faculties, this defendant on or about the 2nd day of April, 1889, caused a notice to be served on the complainant for the purpose of revoking his former permission to use his portrait and the four-globe trade-mark, which at that time was duly registered in the U. S. Patent Office as No. 16405, as will now fully appear by reference to "Defendant's Exhibit A," herewith filed and made a part of this answer; and he further says that the reason why he did not include his portrait trade-mark in said notice was that the same was then in process of litigation in an interference in the U. S. Patent Office, mentioned in the bill of this suit.

9. And this defendant further says that before his release from the insane asylum the complainant, without his consent (there not having been any conservator appointed to transact his affairs for and in his behalf), caused the portrait trade-mark to be recorded and registered in the U. S. Patent Office as No. 15274 ("Complainant's Exhibit D"), which act was in favor of this defendant's lawful rights; and the "statement" as therein shown contains a false averment as to the time of use of said trade-mark, and the "declaration" of the same is false as to the ownership of said trade-mark and in other mentioned particulars.

10. This defendant, further answering, says that, while he reiterates his denial that the complainant has any title or ownership in said two trade-marks of his portrait, he has no knowledge or information sufficient to enable him to form a belief as to the amount of the complainant's business as *of* its expenditures, and leaves it to make what proof it may in that respect.

11. This defendant, further answering, denies that he is now wrongfully engaged in making what he calls "Samaritan nervine" in the county of Douglas, in the State of Illinois, or at any other place; and further denies that he has unlawfully or wrongfully or deceitfully wrapped and packed such so-called Samaritan nervine in wrapper or package similar to that of the complainants; and further denies that he is now unlawfully, wrongfully, or deceitfully

wrapping and packing the same in packages similar to those used by the complainant as alleged in this bill; and further denies that he is now or ever has been wrongfully, unlawfully, or deceitfully engaged in or doing as alleged in the bill herein; and further denies that he has made any sales *as* direct infringement of the complainant's
44 rights, as alleged in said bill, while the truth is that on or about the fifteenth day of July, 1884, which was about five months before the organization of said "Dr. S. A. Richmond Nervine Co.," the complainant, as he had a perfect right to do, began the use of said two trade-marks as such on his own manufacture and for his own exclusive benefit, under the name of the "World's Medical Association," at 559 State street, in the city of Chicago, Illinois, at which place he manufactured and sold his said invention — the common public, and ordinary name of which is "Samaritan nervine," and overstocked the market with the same to such an extent that the said medicine, which was largely consigned by him on commission, is still largely unsold, although ever since on sale, and that portion of the same that has not been sold still continues to be his property and still bears his genuine trade-mark, the two portrait trade-marks heretofore referred to, and which unsold medicine he still offers for sale, as he has a lawful right to do.

12. And this defendant, further answering, denies that he has fraudulently or wrongfully applied to the Patent Office of the United States of America for registering of said trade-mark, as alleged in the bill, for the purpose and with the intent therein named, and further denies that said complainant ever had the exclusive right thereto.

13. And this defendant, further answering, says that as to the allegation of insolvency, that said allegation is untrue as is charged in said complainant's bill.

14. And this defendant, further answering, denies all the allegation contained in the complainant's — not hereinbefore specifically admitted, answered, or denied.

And, having fully answered this bill, the defendant denies that the complainant is entitled to any part of the relief prayed
45 for in and by said bill of complaint; and this defendant prays therefore to be herein dismissed with his reasonable costs most wrongfully sustained by reason of the wrongful acts of the said complainant in filing said bill.

SAMUEL A. RICHMOND.

WM. HENRY BROWNE,
CONNOLLY & MATHER,
C. W. WOOLVERTON,
Solicitors and of Counsel for Defendant.

STATE OF ILLINOIS, } ss.:
Sangamon County, }

Samuel A. Richmond, being first duly sworn, does on his oath say and swear that he is the defendant in the foregoing answer named; that he has read said answer and knows the contents

thereof, and that the same and all matters and facts therein stated are true of his knowledge except as to those stated on information and belief, and as to those he believes them to be true.

SAMUEL A. RICHMOND.

Subscribed and sworn to before me this 7th day of May in the year 1889.

E. A. SNIVELY,
Clerk Supreme Court.

46 WASHINGTON, D. C., *April* 2, 1889.

To the Dr. S. A. Richmond Nervine Company, St. Joseph, Missouri:

Please to take notice that you are required forthwith to discontinue the use of the trade-mark, the essential feature of which is the bust portrait of myself associated with the representation of four globes; which said trade-mark was duly registered in my name in the United States Patent Office on the 19th day of March, 1889, as No. 16405. Any permission by me heretofore given to use said trade-mark or any material part of it is hereby revoked.

(Signed) SAMUEL A. RICHMOND.

(Indorsed:) Filed May 8, 1889. James T. Jones, clerk.

In the Circuit Court of the United States for the Southern District of Illinois.

THE DR. S. A. RICHMOND NERVINE COMPANY }
vs. } Cross-bill.
SAMUEL A. RICHMOND. }

To the judge of the circuit court of the United States for the southern district of Illinois:

Your orator, Samuel A. Richmond, respectfully represents unto your honors that he is an actual resident and citizen of the

47 State of Illinois.

That on the 22d day of April, A. D. 1889, the Dr. S. A. Richmond Nervine Company of St. Joseph, in the State of Missouri, *was* a citizen of said State, filed and exhibited in this court its bill of complaint against your orator for the purpose of restraining and enjoining the defendant therein, your orator, from the use on a certain medicine known as "Samaritan nervine" of two certain trade-marks in said bill described and for other objects and purposes in said bill set forth.

That your orator duly filed an answer to bill, in and by which said answer your orator has specifically admitted or denied all material allegations in said bill contained, which said answer shows that the said nervine company is not entitled to the relief or any part thereof prayed for in said bill; that your orator in and by said answer has joined issue on said bill, and that said bill and answer are now pending in this court; that for the purpose of obtaining

affirmative relief in the premises your orator files herein his cross-bill and shows unto your honors that your orator is now and has been for several years last past engaged in the manufacturing and vending of certain medical preparations or compounds, and that during the entire time of being so engaged he has faithfully endeavored by all lawful means to acquire and enjoy a high reputation for his said medicinal preparations or compounds as merchandise, and to this end has devoted and employed his time, skill, experience, and energies, and in advertising and extending the knowledge and reputation of said preparations and compounds as merchandise has expended large sums of money, amounting in the aggregate to thousands of dollars, lawful money of the United States.

2. Your orator further shows that as means of guarding against fraudulent imitations of his said preparations or compounds
48 he devised and adopted a complex device consisting of a representation of four globes and the portrait of himself in the central part of said device and affixed the said device as a trade-mark to his said merchandise, the same being well known to the persons constituting the corporation defendant and to the public generally in domestic and interstate commerce and in that with foreign nations as indicative of the medicinal preparations or compounds manufactured by or for him and by him vended, and no other person, firm, or corporation has the right to the use of said device either in the identical form or in any such near resemblance thereto as might be calculated to deceive.

3. Your orator further shows that having duly adopted said device as a trade-mark in the month of July, A. D. one thousand eight hundred and eighty-four, he took all reasonable precautions and pains to give it publicity and ensure protection for its exclusive use by him; and desiring to avail himself of all advantages and benefits under and by virtue of the act of Congress approved March 3, 1881, in such case made and provided, your orator did cause to be recorded in the United States Patent Office a statement specifying his name, domicile, location, and citizenship; the class of merchandise and the particular description of goods comprised in such class to which his particular trade-mark has been appropriated; a description of the trade-mark itself, with fac-similes thereof, and a statement of the mode in which the same is applied and affixed to goods, and the length of time during which the said trade-mark has been used, and he did also pay into the Treasury of the United States the sum of twenty-five dollars, and complied with all regulations prescribed by the Commissioner of Patents for such case, and did accompany his application for registration by a written declaration verified by himself to the effect that he had at the time
49 a right to the use of the trade-mark sought to be registered, and that no other person, firm, or corporation has the right to use it either in the identical form or in any such near resemblance thereto as might be calculated to deceive; that the description and fac-similes presented for record truly represent the trade-mark sought to be registered, and that he is a citizen of the United States; and therefore said trade-mark was duly registered and a certificate of

registry duly issued to your orator in the name of the United States of America under the seal of the Department of the Interior and signed by the Commissioner of Patents, which certificate of registry is numbered 16495, is dated the 19th day of March, 1889, and is in full force and effect, and which certificate is here in court, marked Exhibit D, E, & F, attached to the said original bill filed by said nervine company herein, and which he prays may be considered as a part of this bill.

4. Your orator further shows that he is still the exclusive owner of said trade-mark, and that the medicinal preparations or compounds aforementioned are bought by the trade and consumers under the implied guaranty of genuineness offered by means of said trade-mark, and that your orator holds and estimates the fair cash value of said trade-mark to be not less than fifty thousand dollars lawful money of the United States.

5. Your orator further shows that the nervine company began to use said trade-mark on goods of its manufacture substantially the same as his soon after the beginning of its corporate existence, which was on the 9th day of December, 1884; that he permitted its temporary use under certain conditions which have long since ceased to exist, but that he revoked the license which he orally gave for its use, which he lawfully might do; but said corporation, utterly disregarding his protest against its continued use on said goods repeatedly made by him, have continued to use it affixed to its goods, which are of substantially the same descriptive properties as those described in the registration of your orator's trade-mark hereinbefore set forth, and, as your orator is informed and verily believes, said corporation is at this time about to put up and sell many thousand dollars' (to wit, about $40,000) worth of the said medicinal goods, so that the market will be stocked for a long time, to the great pecuniary loss and damage of your orator, who must thereby wrongfully and unjustly be deprived of the legitimate profits that should be derived by him from sales.

6. Your orator further shows that the reason of not sooner instituting a suit to restrain the defendant corporation and its agents and servants from infringing his said trade-mark is the fact that he has been laboring under great pecuniary embarrassment and for a great part of the time was actually physically unable to bear the nervous strain necessarily incident thereto, which facts have wrongfully and unjustly been taken advantage of by the defendant corporation and its officers and servants, to his great loss and damage, as he verily believes, to the extent of many thousand dollars.

7. Your orator further shows that he has used due diligence in this matter, and he is advised and believes and therefore avers that unless the said corporation be restrained and enjoined from a continuance of its aforementioned wrongful acts great and irreparable damage and injury will be caused to your orator in the premises, inasmuch as confusion or mistake is caused in the mind of the public and purchasers deceived in buying the defendant's goods for the genuine manufacture of your orator, which they are not; but

as the amount of profits so diverted from him by the defend-
51 ant corporation cannot now be estimated, although very large, he prays that it may be compelled to make a true and full disclosure of the same and may be decreed to account therefor in full and otherwise to respond in damages as may appear to be equitable.

To the end, therefore, that your orator may have relief in the premises in this honorable court, where only adequate relief can be had, he prays:

First. That the said corporation, The Dr. S. A. Richmond Nervine Company, may be required to answer, by its officers, every material allegation contained in this bill as fully and to the same extent as if they were directly interrogated as to every separate allegation thereof.

Secondly. That the said corporation, The Dr. S. A. Richmond Nervine Company, may be required to render a full, true, and complete account of all profits of every kind and description made or derived by its use of any of or all the imitations of this complainant's aforementioned trade-marks, and may be decreed to pay over to your orator the full and entire amount of said profits.

Thirdly. That the said corporation, The Dr. S. A. Richmond Nervine Company, its officers, agents, employees, and servants, forever be enjoined and restrained from in any manner selling, bartering, disposing of, or offering for sale any medicinal preparation or compound of substantially the same descriptive properties as those described in the registration hereinbefore referred to and bearing an imitation or copy of your orator's said registered trade-mark, or from using as an affix to such preparation or compound or on a wrapper or receptacle for the same said trade-mark or device or any material part of the same, including the portrait of your orator.

52–62 Fourthly. That a preliminary order may be granted without delay restraining the wrongful acts of the corporation, as hereinbefore set forth, and of its officers, agents, employees, and servants until the decision of a motion for an injunction by reason of the premises, inasmuch as there is danger of irreparable injury to your orator from delay, and that your orator may have such other and further relief in the premises as the nature and circumstances of the case may require and as shall seem just and proper.

SAMUEL A. RICHMOND,
By CONNOLLY & MATHER AND
C. W. WOOLVERTON,
His Solicitors.

STATE OF ILLINOIS, } ss.:
Sangamon County, }

Samuel A. Richmond, being first duly sworn, does upon his oath say and swear that he has read the above and foregoing cross-bill, and that the same and all the matters and things therein charged and stated are true of his own knowledge except as to those stated

on information and belief, and as to those he believes them to be true.

SAMUEL A. RICHMOND.

Subscribed and sworn to before me this 7th day of May, A. D. 1889.

E. A. SNIVELY,
Clerk Supreme Court.

(Indorsed:) Filed May 8th, 1889. James T. Jones, clerk.

63 STATE OF ILLINOIS, } ss:
Douglas County, }

S. A. Richmond, being duly sworn according to law, doth depose and say that he is a resident of Douglas county, in the State of Illinois; that he was a member of the Dr. S. A. Richmond Medical Company and doing business in the city of St. Joseph, in the said State of Missouri; that he was also a stockholder, director, and treasurer and president of the said Dr. S. A. Richmond Medical Company; that said medical company was organized on or about the second day of May, A. D. 1884; that for several years prior to the date of the organization of said medical company this affiant had been engaged in the manufacture and sale of a medicine known as Samaritan nervine; that during that time he was the owner of the formula; that he had adopted and used as a trade-mark on said medicine the picture of a man "falling in fit;" that prior to the organization of said company he had said trade-mark registered at Washington, D. C.; that prior to the organization of said medical company he was also the owner of all the necessary fixtures, appliances, and outfit usually used in the manufacture of such a medicine; that on or about the first day of December, A. D. 1883, this affiant informed said medical company that he intended to sever his connection with said medical company and start a new business, separate and alone; that he intended to engage in the manufacture and sale of a new medicine, to be called Richmond's nervine, and that he intended to get his picture engraved to be used as a trade-mark in said new business on said new medicine; that on or about Feb. first, 1884, this affiant further says that he informed the said Dr. S. A. Richmond Medical Company that he intended to get a bust portrait of himself engraved, surrounded by four globes, to be used as
64 a trade-mark in addition to the last-mentioned trade-mark in said new business on said new medicine, and that he would pay for these trade-marks out of his own private fund; that he also informed the said medical company that he intended to have a large bottle made with his picture blown on the bottle, and that he would also have a large cartoon made and have his large picture printed on one side and his bust portrait surrounded by four globes printed on the other side, and that he would pay for these bottles and cartoons out of his own private fund, and that he would use

these pictures and globes as trade-marks to be placed upon said medicine and used in the sale thereof; that he intended to get said trade-mark registered in the Patent Office, at Washington, D. C.; that *on* or about that time he instructed C. W. Woolverton, his attorney at Tuscola, Illinois, to take the necessary steps to secure said trade-mark and the registration thereof as aforesaid; that on or about the 12th day of May, A. D. 1884, the said Dr. S. A. Richmond Medical Company made an assignment for the benefit of its creditors; that this affiant was present at the time said assignment was made and went through the establishment of the said medical company just before the inventory of the assets of the said medical company was made for the purpose of said assignment and assisted in making an inventory of said assets for said purpose; that this affiant assisted in assorting out and classifying the assets of said company so inventoried as aforesaid, and that there was not among the assets of said company then so inventoried as aforesaid any bottles with this affiant's picture or portrait blown thereon nor any caddies or cartoons with his picture or portrait printed on the front or back thereof nor any caddies or cartoons with his picture or portrait surrounded by four globes printed on the front or back
65 thereof; this affiant further swears that in two or three days after said assignment was made there was received by this affiant a box which came by freight from the Novelty Paper Box Company of Philadelphia, Pa., and that said box contained a sample lot of caddies or cartoons; that said caddies or cartoons did have this affiant's picture or portrait printed on the front of each of them and his picture or portrait surrounded by four globes printed on the back of each of them; and this affiant swears that the said Dr. S. A. Richmond Medical Company never did manufacture or sell any medicine known as Samaritan nervine nor any other medicine in bottles with this affiant's picture blown thereon nor in caddies or cartoons with his picture or portrait printed on the front thereof nor in any caddies or cartoons with his picture or portrait surrounded by four globes printed on the back thereof; and this affiant further swears that at the time he so assisted as assorting and classifying the assets of said medical company as aforesaid there was not and never had been among said assets any circulars or advertisements or other printed matter of said medical company relating to any change from the size of the bottles or style, but there was among said assets several thousand circulars, a copy of which circular is hereto attached and marked "Exhibit A;" this affiant further swears that after said assignment the assignee of the said medical company sold to C. W. Woolverton all the assets thereof, but did not deliver to him the personal property claimed by said company; that afterwards said Woolverton assigned his interest in the assets and rights so purchased to one A. B. Powell; that said assignee refused to deliver to him any of the said assets; that thereupon the said A. B. Powell recovered possession of all the personal property that he could find by suit in replevin;
66 that afterwards this affiant rented and leased said personal property and the right to use the said trade-mark of "a man

failing in a fit" and the right to manufacture a medicine known as Samaritan nervine, said last-named trade-mark and said right to manufacture said medicine having been sold by said assignee to said Woolverton and by him assigned to said A. B. Powell; that said affiant afterwards, on or about the 12th day of July, A. D. 1884, shipped said personal property so leased as aforesaid to Chicago, Illinois, and within a short time thereafter began the manufacture and sale of certain medicine under the name of the "World's Medical Association," and then for the first time began the use of his said picture or portrait and his said picture or portrait surrounded by four globes as trade-mark on the medicine manufactured and sold; that neither his said picture or portrait nor picture or portrait surrounded by four globes had ever before been placed upon goods and used as trade-marks in any other manner or any goods, medicine, or Samaritan nervine ever manufactured or sold by the said medical company or any other person or persons or corporations whomsoever; and this affiant further swears that prior to the time said medical company made said assignment this affiant had arranged to engage in business separate and alone; that he originated the design of his picture or portrait and his picture or portrait surrounded by four globes as trade-mark and had them engraved and electrotyped for that purpose and paid for by him out of his own private funds; that he ordered two carloads of his new-style bottles, with his picture blown thereon, from Wm. McCully & Co., of Pittsburgh, Pa., and paid for the same out of his own private funds, and that he ordered 50,000 caddies or cartoons from the Novelty Paper Box Company of Philadelphia, Pa., and paid for the same out of his own private funds,
67 in pursuance of said plan to so engage in business separate and alone; that said bottles were never in the possession of the said medical company nor the assignee thereof; that said caddies or cartoons were never in the possession of the said medical company or the assignee thereof as assets of said company; that these cartoons or caddies all had the picture or portrait of this affiant printed on the front thereof and his picture or portrait surrounded by four globes printed on the back thereof; that the words "prepared by the World's Medical Association, Chicago, Illinois, U. S. A.," *was* printed on the front of all said caddies or cartoons unless the said sample lot so received by this affiant at St. Joseph, Missouri, from the said Novelty Paper Box Company as aforesaid had other words printed thereon. This affiant further says that said sample lot of cartoons or caddies *were* only sent by the said Novelty Paper Box Company to this affiant as a sample of the shape, style, size, and quality of the paper to be used in filling the order for the 50,000 caddies or cartoons, and said sample lot was not considered by this affiant to be a part of the order for the 50,000 caddies or cartoons aforesaid; that said sample lot was contained in one small box, which also contained other cartoons for other medicines for this affiant. This affiant further swears that the statements made and sworn to in their affidavits by Michael Drout and John Christ *is* false in which they state that early in the year or about the first

of January, A. D. 1884, that this affiant had represented to the said medical company that said bottles then being used by the said medical company *was* too small and the wrappers insignificant and ought to be put up in showy cartoons, and that this affiant got up drawings with his picture thereon for the said company's approval,

68 and the said Dr. S. A. Richmond Medical Company accepted and approved of the said intended change as aforesaid; and this affiant further swears that he did not make such said statements nor make said drawings for said medical company, and that said medical company did not accept or approve the same.

This affiant further swears that the large picture of himself and his bust portrait surrounded by four globes or four hemispheres, representing the earth's surface, also his large caddy or cartoon and his large new-style bottle, with his picture blown on the same, were all devises and institutions of his own and were by him so adopted and used as his own and for his sole use and benefit; that the said large portrait of himself *which* he had engraved and adopted as a trade-mark for his own use in his separate business, and that he paid for the same out of his own private fund; that he also devised and adopted a complete devise consisting of a representation consisting of four globes and the portrait of himself in the central part of said devise and affixed the said devise as a trade-mark to his merchandise, the same being well known to the persons constituting the corporation defendant and to the public in general, and no other person, firm, or corporation has the right to the use of said devise, either in the identical form or in any such near resemblance thereto as might be calculated to deceive. This affiant further swears that his said picture surrounded by four globes was paid for by him out of his private fund; and this affiant further swears that said business so carried on in Chicago, Illinois, by this affiant under the name of the World's Medical Association as aforesaid was his own private business; that no other person or persons nor said medical company owned any part of said business and never were and are not now entitled to receive any of the profits or benefits arising therefrom.

69 That this affiant never did convey or sell to the Dr. S. A. Richmond Nervine Company nor any other person any benefits which accrued to him out of the said business nor the said trade-mark of his picture or portrait or his picture or portrait surrounded by four globes nor the exclusive and permanent right to use the same or either of them forever, as claimed by said nervine company; that this affiant never conveyed, sold, or transferred said last-named two trade-marks to said nervine company nor the right to use the same nor either of them; that while the said affiant was business manager of said nervine company he permitted said nervine company to use said trade-mark during the time he so acted as business manager of said nervine company, but that right so acquired by said company ceased when he ceased to be business manager of said nervine company.

And this affiant further swears that he is now the owner of said last above named two trade-marks; and this affiant further swears

that said business so carried on in Chicago, Illinois, by him under the name of the World's Medical Association as aforesaid was his own private business; that no person or persons nor the said medical company owned any part of said business and never were and are not now entitled to receive any of the profits or benefits arising therefrom; that this affiant never did convey or sell to the Dr. S. A. Richmond Nervine Company nor to any person or persons any benefits which accrued to him out of said business nor the said trade-mark of his picture or portrait or his picture or portrait surrounded by four globes nor the exclusive or permanent right to use the same or either of them forever, as claimed by the said nervine company.

That this affiant never conveyed, sold, or transferred said last-named two trade-marks to said nervine company nor the
70 right to use the same or either of them; that this affiant further swears that while he was so engaged in business at Chicago, Illinois, as aforesaid he manufactured large quantities of his said new-style medicine and sold and shipped the same extensively throughout the United States and Canada; that each bottle of said medicine so sold and shipped as aforesaid was enclosed in a caddy or cartoon having said picture or portrait of this affiant printed on the front thereof and his picture or portrait surrounded by four globes printed on the back thereof; that he placed a large quantity of said medicine so enclosed in said cartoons in the hands of Dr. J. A. Fields, a druggist of Tuscola, Illinois, to be sold by said Fields on commission; that he so placed said medicine in the hands of said Dr. J. A. Fields, in Tuscola, Illinois, to be sold by him on commission while this affiant was engaged in the manufacture thereof at Chicago, Illinois, under the name of the World's Medical Association; that said Dr. J. A. Fields ever since that time has sold and shipped the same extensively to druggists throughout the United States and still has said medicine on sale; that ever since this affiant was so engaged in the manufacture of said medicine in Chicago under the name of the World's Medical Association as aforesaid he has had and now has through said Dr. J. A. Fields large quantities of said medicine on sale; that the bottles containing said medicine were all enclosed in cartoons or caddies having his portrait on the front thereof, said portrait surrounded by four globes on the back thereof; that said medicine was all manufactured by this affiant at Chicago, Ill., while he was engaged in business there under the name of the World's Medical Association as aforesaid; that said picture and said pictures surrounded by four globes were used as trade-marks on every
71 bottle of said medicine sold, manufactured, and shipped as aforesaid, including the said medicine so consigned to the said Dr. J. A. Fields on commission as aforesaid.

And this affiant further swears that he was treasurer of said medical company from the time of its organization as aforesaid until the date it made said assignment; that during all said time this affiant usually kept his own private funds and the proceeds of checks, drafts, or post-office orders which came in the name of said medi-

cal company all deposits in the bank of St. Joseph, Missouri, in the name of the said medical company.

That he kept said funds so deposited to save keeping two sets of books; that when he paid his debts through said bank he had to give checks signed by said medical company or by himself as treasurer or business manager thereof.

That if there *is* now any checks so signed by said company by him given or drawn in payment of any of the cuts or electrotypes for said pictures or engravings or bottles or cartoons, the same were paid for out of funds belonging to this affiant.

This affiant further swears that he has never abandoned his said trade-mark, the large picture or portrait of himself, nor his bust portrait surrounded by four globes as aforesaid; that he has had continuously on sale large quantities of the said new-style medicine ever since the adoption of the said trade-marks as aforesaid on said new-style medicine; that he never intended to cease using them and has never abandoned their use. This affiant further swears that he employed C. W. Woolverton, his attorney at Tuscola, Illinois, about the first of March, A. D. 1884, to make application at the Patent Office, Washington, D. C., and to take the necessary steps to secure a copyrighted trade-mark on his large portrait;
72 also his bust portrait surrounded by four globes, having furnished the said Woolverton several printed copies of each, with the necessary instructions, as required by law, and through the negligence of the said Woolverton the matter was overlooked; that it was a long time after that that this affiant discovered that the said Woolverton had not made any application for the same; that not long after this discovery was made this affiant was taken sick and remained an invalid for over two years and was not able to transact business, but as soon as his health was recovered he made an application, through his attorney at Washington, D. C., to secure a trade-mark on his large portrait and also on his bust portrait surrounded by four globes.

That he secured a trade-mark on his bust portrait surrounded by four globes, but his large portrait was rejected by the Commissioner of Patents; that said rejection was made for the reason that the Dr. S. A. Richmond Nervine Company had secured a trade-mark thereon without the knowledge or consent of this affiant on false testimony after this affiant had been adjudged insane and confined in an insane hospital and before he was legally released therefrom, while he was legally disqualified from doing business and while no conservator had been appointed for him.

And this affiant further swears that in his evidence taken on 16th day of April, A. D. 1889, at Washington, D. C., he may have made statements to the effect that he was not treasurer of said medical company; but if he made such statements they were made by him by mistake and misunderstanding, and he now desires to correct said statements, and says that he was treasurer of said medical company from its organization to its assignment.

S. A. RICHMOND.

73 & 74 STATE OF ILLINOIS, } ss.
County of Saugatuck, }

S. A. Richmond, being first duly sworn before the undersigned N. P., on oath says the foregoing affidavit subscribed by him is true in substance and in fact.

THOMAS C. MATHER, *N. P.*

75 & 76 STATE OF ILLINOIS, } ss.
Douglas County, }

John A. Feild, being duly sworn, does on his oath say and swear that he is now and has been for more than ten years last past a resident of the county of Douglas and State of Illinois; that during that time he has been engaged in the drug trade in said city of Tuscola; that some time during the latter part of July or the first part of August, 1884, he began to receive from Dr. S. A. Richmond, who was then doing business at Chicago, Illinois, large shipments of medicine through his agents at Tuscola, Illinois; that said Dr. S. A. Richmond was then doing business under the name of the World's Medical Association; that said medicine so shipped as aforesaid and received by this affiant was Samaritan nervine, and each and every bottle thereof was enclosed in a caddy or cartoon with said Dr. S. A. Richmond's picture or portrait printed on the front thereof and his picture or portrait, surrounded by four globes, printed on the back thereof; that said medicine was so received by this affiant on commission, to be sold by him to the druggists throughout the United States either at wholesale or retail; that thereupon this affiant began the sale of said medicine and sold the same extensively to druggists throughout the United States and has continued to make such sale from that time until recently.

And this affiant further swears that ever since he so received the first shipment of said medicine as aforesaid he has continually had large quantities of the same on sale and now has said medicine on sale.

And this affiant further swears that a copy or sample of said caddies or cartoons which enclose the bottles containing said medicine so received by him as aforesaid is hereto attached and marked
77 "Exhibit A," and that said copy or sample was this day taken from the stock of said medicine now on hands and for sale by this affiant.

JOHN A. FEILD.

Subscribed and sworn to before me this 29 day of May, A. D. 1889.

C. W. WOOLVERTON,
Notary Public.

(Indorsed:) Filed May 30, 1889. James T. Jones, clerk.

Now, afterwards, to wit, on the thirty-first day of May, in the January term of said court and year last aforesaid, the following

further proceedings were had in said court in said cause and entered of record, to wit:

DR. S. A. RICHMOND NERVINE COMPANY } In Chancery.
vs.
SAMUEL A. RICHMOND. }

On reading and filing the cross-bill of said Samuel A. Richmond herein and the affidavits thereto attached it is ordered that the defendant, The Dr. S. A. Richmond Nervine Company, show cause on the 2nd day of July, 1889, at ten o'clock a. m., why a preliminary injunction should not be issued in this cause enjoining and restraining said Dr. S. A. Richmond Nervine Company, its agents, factors, attorneys, clerks, servants, and employees of every description, from directly or indirectly, in any way or manner, making, using, selling, offering, or exposing for sale proprietary medicine or any medi-
cine put up in bottles having the portrait of said Dr.
78 Samuel A. Richmond or any similar portrait blown therein or affixed thereto, or in any packages having said portrait or any similar portrait printed on their wrappers or otherwise placed on their outsides, or any medicine put up in bottles or packages having labels affixed thereto containing the figure of a man falling backward, with his arms extended and his cane and hat dropping, or any picture or figure so nearly resembling the same as to be calculated to mislead or deceive purchasers, pursuant to the prayer of said cross-bill.

It is further ordered by the court that the said defendant, The Dr. S. A. Richmond Nervine Company, upon giving five days' notice to the complainant in said cross-bill may be permitted to appear at any time and move to dissolve or discharge this temporary restraining order.

STATE OF MISSOURI, } *ss:*
County of Buchanan, }

Mrs. Eva E. Richmond, being first duly sworn, upon her oath states that she is a resident of the city of St. Joseph, State of Missouri; that she was a shareholder in the Dr. S. A. Richmond Medical Company; that Dr. S. A. Richmond was a shareholder in and president and director of said medical company and its treasurer; that as such he had charge and supervision of the advertising, engraving, and printing for said company and had charge of the business and designed and circulated the printed matter sent out by said company, and designed the wrappings and the manner of packing and filling up and labeling the medicines sent out by said company, for which services he was employed and paid by said company $200 per month; that the principal business of said company was the manufacture and sale of a proprietary medicine known as Dr. S. A.
Richmond's Samaritan nervine; that in the latter part of Decem-
79 ber, 1883, or early in the month of January, 1884, he represented to the shareholders in said company that it was necessary to change the form of putting up the nervine; that the old trade-mark

or design upon the wrappers of a man falling in a fit was not sufficiently conspicuous, and he designed a new wrapper having his portrait in front and a smaller portrait of himself on the back of the wrapper, between four globes. He also represented that the bottle should be enlarged and bear his portrait blown in it. These changes were assented to and adopted, engravings were made, and all paid for out of the company's funds. A very large amount of printed matter was prepared and sent out to all patrons and to the public generally with the notice hereto attached, marked Exhibit "A," that such change would be made on 1st of May, 1884. In furtherance of this change a very large number of caddies or cartoons in the new style were ordered by S. A. Richmond for said company from the Novelty Paper Box Co. of Philadelphia.

A considerable number of these cartoons were received by the company before the first of May, 1884, and another consignment came to hand about the 10th day of May, 1884. About 25 gross of the new-style bottles were received about the first day of May of the same year. All of these bottles and caddies were ordered for the said medical company by its president, S. A. Richmond, in accordance with the design to change the form of the bottle and wrappings to the new style according to the notice before given to their patrons and the public. All of these cartoons had the large portrait of Dr. S. A. Richmond on the front and a smaller portrait between four globes on the back, and the bottles were the enlarged bottle, with the picture of Dr. S. A. Richmond and his name blown in them. These new-style bottles and caddies or cartoons were
80 exclusively used on all Samaritan nervine sent out by said company after May 1st, 1884, to the 13th of that month. This design was gotten out to be used solely on the Samaritan nervine, and never has been used on anything else as far as affiant knows.

Affiant further states that on the 13th day of May, 1884, the said medical company made an assignment of all its property and effects to John F. Tyler for the benefit of its creditors; that afterwards said John F. Tyler, as assignee, sold and conveyed to James A. Richmond all the rights and property, including the formula for compounding said Samaritan nervine and the exclusive right to make and sell the same; that afterward, on the 11th day of December, 1884, the Dr. S. A. Richmond Nervine Co. was formed and organized; that Dr. S. A. Richmond was one of the principal promoters of said new corporation; that at the first meeting of said nervine company, held on the 11th day of December, 1884, S. A. Richmond was appointed general manager and treasurer of said nervine Co., and James A. Richmond sold and conveyed to the said nervine Co. all the rights and property in the formula for compounding the Samaritan nervine medicine and sell the same and the trade-mark used by the old medical Co.

The new company was formed as and for a substitute for the old medical company to make, manufacture, and sell the Samaritan nervine.

There was no other contract made or entered into between the nervine company and Dr. S. A. Richmond than what appears on

the records of the proceedings of its board of directors. He was employed to manage the business and as treasurer, and for such service he was to receive and did receive $200 *dollars* per month and what medicine he needed in his patient practice. There was nothing said or any contract made with him as to the con-
81 tinued use of his portrait. He, as general manager of the concern, contracted for bottles, cartoons, wrappings, and printed matter and advertisements, all showing, exhibiting, and advertising the medicine put up in the bottles and enclosed in cartoons, with his portrait in front and back, in the same form adopted and used by the medical company in the spring of 1884, and which it continued to use up to the time of the assignment.

Affiant further states that Dr. S. A. Richmond remained in the employment of the nervine company as the general manager and treasurer from the 11th day of December, 1884, until January, 1886; that during that time all the nervine sold or shipped by said company was put up in the form now used and was so put up and shipped and advertised under the direct personal supervision of the said S. A. Richmond, as the general manager of said company.

Affiant further states that the capital stock of said nervine company consists of twenty shares of $100 each, of which affiant owns fourteen shares, James A. Richmond four shares, Michael Draut one share, John Christ one share. Affiant has sold and assigned to said Christ one share about ten days ago; and further affiant saith not.

EVA E. RICHMOND.

Subscribed and sworn to before me, the undersigned notary public, this the second day of May, 1889. My commission expires Nov. 17th, 1892.

WILLIAM R. HOFFMANN,
Notary Public.

(Indorsed:) Filed July 2, 1889. James T. Jones, clerk.

82 STATE OF ILLINOIS, } ss.
Douglas County, }

James A. Richmond, being duly sworn according to law, doth depose and say that he is a resident of Douglas county, in the State of Illinois; that he was a member of the Dr. S. A. Richmond Medical Company, which was located in the State of Missouri and doing business in the city of St. Joseph, in the said State of Missouri; that he was also a stockholder and director of the said Dr. S. A. Richmond Medical Company; that he is well acquainted with Dr. S. A. Richmond, of Tuscola, Illinois, formerly of St. Joseph, Missouri; that the said Dr. S. A. Richmond was a stockholder, director, and also president of the said Dr. S. A. Richmond Medical Company; that about the first of March, A. D. 1884, the said Dr. S. A. Richmond Medical Company became insolvent; that upon hearing of the insolvency of said company this affiant took Charles W. Woolverton, an attorney-at-law, of Tuscola, Illinois, to St. Joseph, Mis-

souri, to make an examination of the financial condition of said company.

That upon said examination it was found necessary to make an assignment; that, however, the company continued to do business until the thirteenth day of May, A. D. 1884, when an assignment was made by said company for the benefit of its creditors; that at the organization of the said Dr. S. A. Richmond Medical Company, the said company, it did not have or own any property or assets of any kind or character.

And this affiant further swears that no part of the capital stock of said company was ever paid in within the time and in the manner provided by the laws of the State of Missouri; that on or about the first day of December, A. D. 1883, the said Dr. S. A. Richmond informed this affiant that he intended to sever his connection with
83 the said Dr. S. A. Richmond Medical Company and start a new business alone and not connected with said company; that he intended to engage in the manufacture and sale of a new medicine, to be called Richmond's nervine, and that he intended to get his picture engraved to be used as a trade-mark for his individual use and benefit on said new nervine; that on or about Feb. 1, A. D. 1884, this affiant further says that the said Dr. S. A. Richmond informed him that he intended to get a bust portrait of himself engraved, surrounded by four globes, to be used as a trade-mark, in addition to the first-mentioned trade-mark, for his own individual use and benefit, and that he would pay for these trade-marks out of his own private fund; that he also informed this affiant that he intended to have a large bottle made with his picture blown on the bottle, and that he would also have a large cartoon made and have his picture printed on one side and his bust portrait surrounded by four globes on the other side, and that he would pay for these bottles and cartoons out of his own private funds, and that he would use these pictures and globes as trade-marks to be placed upon said medicine and used in the sale thereof; that he intended to get said trade-marks registered in the Patent Office, at Washington, D. C.; that *on* or about that time he instructed C. W. Woolverton, his attorney at Tuscola, to take the necessary steps to secure said trade-mark and the registration thereof as aforesaid; that the said Dr. S. A. Richmond also notified this affiant, on or about the first day of March, A. D. 1884, that the Dr. S. A. Richmond Medical Company was going to make an assignment; that it was insolvent; that said Dr. S. A. Richmond then had all the arrangements made and plans matured to engage in business alone after said assignment should be made and to use in said business to be begun by him on his medicines the said two trade-marks in the sale of said new medicine; that on or
84 about the tenth day of May, A. D. 1884, the said Dr. S. A. Richmond Medical Company made an assignment for the benefit of its creditors; that this affiant was present at the time said assignment was made and went through the establishment of the said medical company just before the inventory of the assets of said medical company was made for the purpose of said assign-

ment and assisted the said Dr. S. A. Richmond as president of said company in making an inventory of said assets for said purpose.

That this affiant then assisted said Dr. S. A. Richmond in sorting out and classifying the assets of said company so inventoried as aforesaid, and that there was not among the assets of said company then so inventoried as aforesaid any bottles with Dr. S. A. Richmond's picture or portrait blown thereon nor any caddies or cartoons with the picture or portrait of the said Dr. S. A. Richmond on the front or back thereof nor any caddies or cartoons with the picture or portrait of the said Dr. S. A. Richmond surrounded by four globes printed on the front or back thereof.

This affiant further swears that in two or three days after the said assignment was made there was received by the said Dr. S. A. Richmond, at St. Joseph, Missouri, a box, which came by freight, from the Novelty Paper Box Company of Philadelphia, Pa; that said Dr. S. A. Richmond opened said box in the presence of this affiant and it contained a sample lot of caddies or cartoons; that said caddies or cartoons did have Dr. S. A. Richmond's picture or portrait printed on the front of each of them and his picture or portrait surrounded by four globes printed on the back of each of them.

And this affiant further swears that the said Dr. S. A. Richmond Medical Company never did manufacture nor sell any medicine known as Samaritan nervine nor any other medicine in bottles
87 with Dr. S. A. Richmond's picture blown thereon nor in caddies or cartoons with his picture or portrait printed on the front thereof nor any caddies or cartoons with his picture or portrait surrounded by four globes printed on the back thereof.

And this affiant further swears that at the time he so assisted said Dr. S. A. Richmond in assorting and classifying the assets of said medical company as aforesaid there was nowhere to be found among said assets any circulars or advertisement or other printed matter of said medical company relating to any change from the size of the bottles or style of the wrappers then or previously used by said company to any new style, but that he did find among said assets several thousand circulars, a copy of which said circulars is hereto attached and marked Exhibit "A."

That this affiant was a stockholder and officer of said company from the date of its organization up to the date of said assignment, and that he never had any notice, either through the said Dr. S. A. Richmond or said company or any of the officers thereof or otherwise, that said company contemplated any change from the style of bottle or wrapper first adopted by it and used by it during that entire period, but the said Dr. S. A. Richmond did show me after the assignment was made his engravings and electrotypes relating to his said new-style nervine; said engravings and electrotype plates he left at his residence and never were in the hands of the assignee of the Dr. S. A. Richmond Medical Company and never were a part of the assets of said medical company nor even belonged to said company; that after said assignment the assignee of said medical company sold to C. W. Woolverton all the assets thereof, but did not

deliver to him the personal property of said company; that afterwards said Woolverton assigned his interests in the assets and
86 rights so purchased to one A. B. Powell; that said assignee refused to deliver to him any of the said assets; that thereupon the said A. B. Powell recovered possession of all the personal property he could find by suit in replevin; that afterwards the said Dr. S. A. Richmond rented and leased said personal property and the right to use the said trade-mark of "a man falling in a fit" and the right to manufacture a medicine known as Samaritan nervine, said last-named trade-mark and said right to manufacture said medicine having been sold by said assignee to said Woolverton and by him assigned to said A. B. Powell; that said Dr. S. A. Richmond afterwards, on or about the 12th day of July, A. D. 1884, shipped said personal property so leased as aforesaid to Chicago, Illinois, and within a short time thereafter began the manufacture and sale of a certain medicine under the name of the World's Medical Association, and then for the first time began the use of his said picture or portrait and his said picture or portrait surrounded by four globes as trade-marks on the medicine manufactured and sold; that neither his said picture or portrait nor picture or portrait surrounded by four globes had ever before been used as trade-marks or in any other manner on the goods, medicine, or Samaritan nervine ever manufactured or sold by the said medical company or any other person or persons or corporations whomsoever.

And this affiant further swears that prior to the time said medical company made said assignment the said Dr. S. A. Richmond had arranged to engage in business alone and apart from said medical company and to sever his connection with said company; that he originated the design of his picture or portrait and his picture or portrait surrounded by four globes as trade-marks and had them engraved and electrotyped for that purpose; that he ordered two car-loads of bottles with his picture blown thereon from Wm. Me-
87 Cully & Co., of Pittsburg, Pa., and 50,000 cartoons or caddies from the Novelty Paper Box Company of Philadelphia, Pa., in pursuance of said plan to so engage in business separate and alone; that said bottles were never in the possession of the said medical company nor the assignee thereof; that said caddies or cartoons were never in the possession of the said medical company and were never in the possession of the assignee thereof as assets of said company; that said cartoons or caddies all had the picture or portrait of said Dr. S. A. Richmond printed on the front thereof and his picture or portrait surrounded by four globes printed on the back thereof; that the words "prepared by the World's Medical Association, Chicago, Illinois, U. S. A." *was* printed on the front of all said caddies or cartoons unless the said sample so received by the said Dr. S. A. Richmond at St. Joseph, Missouri, from the said Novelty Paper Box Company as aforesaid—

That this affiant does not believe that the words "prepared by the Dr. S. A. Richmond Medical Company, St. Joseph, Missouri, U. S. A.," were printed on the front of said sample lot of caddies or cartoons; that said sample lot of caddies or cartoons *was* never in

the possession of the said medical company nor the assignee thereof as a part of the assets thereof; that said sample lot of cartoons or caddies *were* only sent by the said Novelty Paper Box Company to said Dr. S. A. Richmond as a sample of the shape, style, size, and quality of the paper to be used in filling the said order for 50,000 caddies or cartoons; that said sample lot was contained in one small box, which also contained samples of other cartoons for other medicine for the said Dr. S. A. Richmond.

And this affiant further swears that said business so carried on in Chicago, Illinois, by said Dr. S. A. Richmond under the
88 name of the World's Medical Association as aforesaid was his own private business; that neither this affiant nor said medical company owned any part of said business and never were and are not now entitled to receive any of the profits or benefits arising therefrom; that said Dr. S. A. Richmond never did convey or sell to the Dr. S. A. Richmond Nervine Company nor to this affiant any benefits which accrued to him out of said business nor the said trade-mark of his picture or portrait or his picture or portrait surrounded by four globes nor the exclusive and permanent right to use the same or either of them forever, as claimed by said nervine company.

That this affiant never conveyed, sold, or transferred said last-named two trade-marks to said nervine company nor the right to use the same or either of them; that while the said Dr. S. A. Richmond was business manager of said nervine company he permitted said nervine company to use said trade-marks during the time he so acted as business manager of said nervine company, but that the right so acquired by said company ceased when he ceased to be the business manager of said nervine company.

And this affiant further swears that the said Dr. S. A. Richmond is now the owner of said last above named two trade-marks; and this affiant further swears that while the said Dr. S. A. Richmond was so engaged in business at Chicago, Illinois, as aforesaid he manufactured large quantities of his new-style medicine and sold and shipped the same extensively to druggists throughout the United States and Canada.

That each bottle of medicine so sold and shipped as aforesaid was enclosed in a caddy or cartoon having the said picture or portrait of the said Dr. S. A. Richmond printed on the front thereof and his picture or portrait surrounded by four globes printed on the back thereof; that he placed large quantities of said medicine
89 so enclosed in said cartoons in the hands of Dr. J. A. Fields, a druggist, of Tuscola, Illinois, to be sold by said Fields on commission, while he, the said Dr. S. A. Richmond, was engaged in the manufacture thereof at Chicago, Illinois, under the name of the World's Medical Association; that said Dr. J. A. Fields ever since that time has sold and shipped the same extensively to druggists throughout the United States and still has said medicine on sale; that ever since he was engaged in the manufacture of said medicine in Chicago, under the name of the World's Medical Association as aforesaid, the said Dr. S. A. Richmond has had and now has, through

said Dr. J. A. Fields, large quantities of said medicine on sale; that the bottles containing said medicine *was* all enclosed in cartoons or caddies having said portrait on the back thereof; that said medicine was all manufactured by said Dr. S. A. Richmond at Chicago, Illinois, while he was engaged in business there under the name of the World's Medical Association as aforesaid; that said picture and said picture surrounded by four globes were used as trade-marks on every bottle of said medicine sold, manufactured, and shipped as aforesaid, including the said medicines so consigned to the said Dr. J. A. Fields on commission as aforesaid.

This affiant further swears that he does not believe the said Dr. S. A. Richmond, while he was doing business at Chicago as aforesaid, had labels printed containing the words "prepared by the Word's Medical Association, Chicago, Illinois," and pasted said labels on any cartoons or caddies over the words "prepared by the Dr. S. A. Richmond Medical Company, St. Joseph, Missouri," as sworn to by John Christ and Michael Drout in their affidavits, but this affiant does swear that if said labels were so pasted on any cartoons or caddies over said words last named they were only so pasted over said words on the said cartoons or caddies contained in said sample
90–101 lot so received by the said Dr. S. A. Richmond as aforesaid: that said sample lot was his property and contained only a very limited number of cartoons or caddies.

That this affiant further swears that the statements made and sworn to in their affidavits by Michael Drout and John Christ is false in which they state that early in the year or about the first of January, A. D. 1884, that the said Dr. S. A. Richmond represented to the said medical company that said bottles then being used by the said medical company was too small and the wrappers insignificant; that it ought to be put up in showy cartoons, and that the said Dr. S. A. Richmond did get up drawings with his pictures thereon for the company's approval, and that the said Dr. S. A. Richmond Medical Company did accept and approve of the said intended change as aforesaid; and this affiant further swears that said Dr. S. A. Richmond did not make such statements nor make said drawings for said company, and that said company did not accept or approve the same.

And this affiant further swears that in his evidence taken on the 16th day of April, A. D. 1889, he may have stated that a sample lot of said cartoons or caddies or a portion of them or some of them or a few of them were received just before or about the time of said assignment, but if he made any such statements in said evidence or any similar statements in reference to said cartoons or caddies they were made by mistake or misunderstanding and he now desires to correct the same, if any were so made —, to the statements about said cartoons or caddies herein contained which are the true facts about the receipt of said cartoons or caddies.

JAMES A. RICHMOND.

Subscribed and sworn to before me this 29th day of May, A. D. 1889.

A. W. WALLACE,
Notary Public.

(Indorsed:) Filed July 2nd, 1889.

102 In the Circuit Court of the United States for the Southern District of Illinois.

The amended cross-bill of Samuel A. Richmond (filed herein by leave of said court) to the original bill of complaint filed in said court by the Dr. S. A. Richmond Nervine Company.

To the honorable the judges of the said circuit court:

Your orator, Samuel A. Richmond, respectfully represents that he is a citizen of the county of Douglas, in the State of Illinois; that on the 22nd day of April, A. D. 1889, the Dr. S. A. Richmond Nervine Company of St. Joseph, Missouri, filed its bill of complaint in this court against your orator, in and by which said bill of complaint it prays that your orator may be by this honorable court *ob*joined from making and selling a certain medicine known as Samaritan nervine; that your orator may be required to account for and disclose certain alleged sales of said medicine therein charged to have been made by him; that your orator may be enjoined from using certain trade-marks therein described and from prosecuting the registration of a certain trade-mark therein described, and that your orator may be enjoined from the commission of certain alleged acts as set forth in said bill of complaint.

Your orator further represents that he has filed his answer to said bill of complaint, and that in *any* by said answer he has fully answered all the allegations, as will more fully appear by a reference to said answer now on file in this court.

And for the purpose of obtaining affirmative relief your orator further represents that for several years prior to the second day of May, A. D. 1882, he was extensively engaged in the busi-
103 ness of making and selling a proprietary medicine known as Samaritan nervine at the city of St. Joseph, in the State of Missouri, and that during said time he used as a trade-mark on all the said medicines so sold by him the figure of a man falling in a fit; a copy thereof is hereunto attached, marked Exhibit "A."

That on or about said second day of May, A. D. 1882, or a short time prior thereto your orator was advised and believed that he could more successfully carry on said business under the name of a company.

That, acting upon such advice and belief, your orator caused the Dr. S. A. Richmond Medical Company to be organized on or about the date last aforesaid.

That the said medical company did not at the time of its organization nor at any time thereafter have, own, possess, acquire, or control, except as hereinafter named, any money or property of any

kind or description nor any goods, chattels, credits, or choses in action nor any real, personal, or mixed property of any character.

That your orator became the actual owner of nine-tenths of all the shares of the stock of said company, though a large portion of the same was by the consent of your orator issued to and held by other persons in trust for your orator; that a part of said shares of stock was by the consent of your orator issued to and held by other persons who acted as officers of said company, and that none of the persons who so held said shares of stock as aforesaid ever paid to your orator or to said company or to any person or persons any consideration for said shares of stock or any part thereof.

That said company was organized for the sole and exclusive benefit of your orator; that on or about the second day of May, A. D. 1882, your orator assumed the management of said company
104 and began to carry on said business of making and selling said "Samaritan nervine" under the name of said company and so continued till about the 13th day of May, A. D. 1884.

That at the time your orator so began to carry on said business in the name of said company aforesaid he furnished all the money, outfit, apparatus, fixtures, and property necessary for use in said business out of his own property and funds; that while a portion of said property, fixtures, outfit, and apparatus and the said trade-mark of a man falling in a fit, and the formula for making said nervine, together with the right to use, manufacture, and sell the same, may have been transferred to said company, yet no consideration whatever was ever paid by said medical company to your orator for the same nor to any person or persons for him, and that during all the time he so carried on said business in the name of said company as aforesaid he was the actual owner of all said property, fixtures, apparatus, outfit, trade-mark, and formula.

That by virtue of being the actual owner of said shares of stock and said property, fixtures, outfit, apparatus, formula, trade-mark, and right to manufacture and sell said nervine, your orator assumed the exclusive control and management of said business and said medical company and dictated the course to be pursued in said business, and expended large sums of money in extensively advertising the same throughout the United States and the Canadas.

That during the latter part of the year 1883 and the first part of the year 1884 the said business so carried on in the name of said medical company as aforesaid became involved, and the liabilities incurred therein were largely in excess of the assets and profits thereof.

That therefore the said medical company, on or about the 13th day of May, A. D. 1884, by the consent of your orator and
105 its other officers, made an assignment to one John F. Tyler for the benefit of its creditors, and said property, fixtures, outfit, apparatus, trade-mark, and formula were inventoried to said John F. Tyler, as assignee, as assets of said medical company by the consent of your orator.

That said John F. Tyler thereupon sold said fixtures, outfit, apparatus, and said trade-mark and formula, and the right to manu-

facture and sell said nervine to one C. W. Woolverton; that he afterwards assigned his interest in the same to one A. B. Powell; that said assignee, Tyler, refused to surrender the possession of the same to said A. B. Powell; that thereupon the said A. B. Powell recovered by writ of replevin the possession of so much of said fixtures, outfit, and apparatus and other assets so assigned to him as could be replevined.

That afterwards your orator leased all the said fixtures, outfit, apparatus, and other assets, so sold, assigned, and replevined as aforesaid, and removed the same to Chicago, in the State of Illinois, on or about the 12th day of July, A. D. 1884; that some time during that month your orator began and carried on the business of manufacturing and selling said "Samaritan nervine" at said city of Chicago, in the said State of Illinois, under the name of the "World's Medical Association;" that your orator continued said business in said city of Chicago under said name until about the last of October, A. D. 1884, or the first of November, A. D. 1884.

That all the said nervine so manufactured and sold by your orator under said name of the World's Medical Association as aforesaid was contained in the bottles manufactured for your orator by William McCully & Co., of Pittsburg, Pa.; that each of said bottles had the picture or portrait of your orator blown on one side and his individual name was also blown on each of said bottles; that each of said bottles was enclosed in a caddy or cartoon manu-
factured by the Novelty Paper Box Company of Philadel-
106 phia, Pa., expressly for your orator; that your orator's pict-
ure or portrait was printed on the front of each of said caddies or cartoons, and that his picture or portrait surrounded by four globes or hemispheres was printed on the back of each of said caddies or cartoons.

That the said picture or portrait of your orator so blown on the side of each of said bottles, the said picture or portrait of your orator so printed on the front of each of said cartoons or caddies as aforesaid, and the picture or portrait of your orator surrounded by four globes, so printed on the back of each of said caddies or cartoons as aforesaid, were all used by your orator on all such medicine as trade-marks in the sale thereof; that your orator originated said devices as trade-marks and had them so blown on said bottles and printed on said cartoons or caddies and adopted them as trade-marks as a means of guarding against fraudulent sale of said medicines; that he affixed the same to his said merchandise as trade-marks; that your orator first adopted and began to use said picture or portrait and said picture or portrait surrounded by four globes as trade-marks on merchandise sold by him during the month of July, A. D. 1884; that they had not been before used or adopted as trade-marks upon goods manufactured and sold by any other person or persons or corporation whomsoever; that your orator has continued to use the said picture or portrait and picture or portrait surrounded by four globes as trade-marks on merchandise sold by him from the said month of July, A. D. 1884, to the date of the filing of the original bill herein, and that during that time he has

expended large sums of money in advertising his merchandise and said trade-marks, to wit, the sum of many thousands of dollars; that his continued use of said picture or portrait and his picture or portrait surrounded by four globes and his exclusive right to so
107 use the same is and has been well known to the persons who claim to constitute said pretended "Dr. S. A. Richmond Nervine Co." and to the public generally in domestic and interstate commerce and in that with foreign nations, and that no other person or persons or firm or corporation has the right to use said picture or portrait or picture or portrait surrounded by four globes either in the identical form thereof or in any such near resemblance thereto as may be calculated to deceive.

And your orator further represents that after the said John F. Tyler had sold said outfit, fixtures, apparatus, formula, and trade-mark, and the right to manufacture and sell said nervine to said Woolverton, he, the said Tyler, again offered the same for sale; that thereupon your orator entered into a contract with one James A. Richmond, in and by which said contract it was agreed by and between your orator and the said James A. Richmond that he, the said James A. Richmond, should advance the money and purchase for your orator from said A. B. Powell his interest in said fixtures, outfit, apparatus, formula, trade-mark of a man falling in a fit, and his interest in the right to use the same and to manufacture and sell said "Samaritan nervine;" that it was further agreed in and by said contract between your orator and the said James A. Richmond that the said James A. Richmond should also advance the money and purchase for your orator from said assignee all the interest he claimed in said fixtures, outfit, apparatus, formula, trade-mark of a man falling in a fit, and whatever interest the said assignee claimed in the right to use the same or to make or sell said nervine.

That it was further agreed by and between your orator and the said James A. Richmond in and by said contract that your orator should pay back to him, the said James A. Richmond, whatever sums of money he might expend for the purposes as aforesaid.

That in pursuance of said contract so made by and between
108 your orator and the said James A. Richmond, he, the said James A. Richmond, did purchase for your orator from said A. B. Powell his interest in said fixtures, outfit, apparatus, formula, trade-mark of a man falling in a fit, and the right to use the same and to manufacture and sell said nervine, and that the said James A. Richmond did also purchase for the benefit of your orator from said John F. Tyler, assignee as aforesaid, all interest claimed by him or said medical company in and to the said fixtures, outfit, apparatus, formula, trade-mark of a man falling in a fit, and whatever right the said assignee or company had to use the same or manufacture or sell said "Samaritan nervine."

That the said sale so made by said assignee to the said James A. Richmond, as aforesaid, was in all things approved and confirmed by the circuit court of the county of Buchanan, in the State of Missouri, that being the court in which said assignment was pending.

That your orator thereupon became and was the actual owner of said outfit, fixtures, apparatus, formula, trade-mark of a man falling in a fit, and the right to use the same and to manufacture and sell said "Samaritan nervine," though the said James A. Richmond held the same in trust for him, and that your orator paid back to said James A. Richmond all the money advanced and paid out by him for the purposes aforesaid.

Your orator further represents that he was desirous of carrying on said business in the said city of St. Joseph, in the State of Missouri; that he believed that he could most successfully carry on said business under the name of a company; that he was erroneously advised that it would be necessary to formally organize a corporation under the laws of the State of Missouri; that, acting upon such advice and belief, your orator made another contract with said James A. Richmond, in and by which he agreed to organize the "Dr. S. A. Richmond Nervine Company," and to transfer to said nervine company the said outfit, fixtures, apparatus, formula, trade-mark of a man falling in a fit, the right to use the same and the right to manufacture and sell said "Samaritan nervine," so held by him in trust for your orator as aforesaid, and that as soon as said nervine company was organized he would control all shares of the capital stock of said company, and either assign said shares of said stock to your orator or have the same assigned to your orator or any other person or persons whom your orator might designate.

That, in pursuance of said last-named contract, the said James A. Richmond, by the consent of your orator, associated with him one Michael Draut and one John Christ, who were then employees of your orator; that on or about the 9th day of December, A. D. 1884, they entered into articles of association under the name of the "Dr. S. A. Richmond Nervine Company;" that they afterwards caused the same to be filed in the office of the recorder of deeds in and for the county of Buchanan, in the State of Missouri; that they afterwards caused the same to be filed in the office of the secretary of state in and for the State of Missouri; that said secretary of state issued to them a certificate of corporate existence, and that a copy of articles of association and certificate of corporation are hereunto attached and marked Exhibit B.

Your orator further represents that he is informed that in pursuance of said agreement the said James A. Richmond did transfer to said nervine company said outfit, fixtures, apparatus, formula, trade-mark of a man falling in a fit, the right to use the same and the right to manufacture and sell said "Samaritan nervine."

That no part of the capital stock of said company was ever actually paid up and in the hands of the persons named as the first board of directors, as stated in said articles of association, and that no part of said capital stock was ever paid to or placed in the hands of any person or persons or firm or corporation for them or either of them, and that no part of said capital stock was ever paid to or received by the said nervine company or any of the officers or directors thereof.

That your orator further represents that the number of shares of the capital stock of said nervine company was twenty; that eighteen of said shares of stock were issued to said James A. Richmond; that one share of said stock was issued to Michael Draut; that one share of said stock was issued to said John Christ, and that neither the said James A. Richmond, John Christ, nor the said Michael Draut ever paid to said company or any of the officers or directors thereof any consideration for any of the said shares of stock.

Your orator further represents that the said James A. Richmond did assign to one Eva E. Richmond, the wife of your orator, fourteen of the said shares of stock of said nervine company, to be held by her in trust for your orator; that he caused said John Christ to assign to her one of said shares, to be held by her in trust for your orator; that said James A. Richmond retained four of said shares of stock in his own name in trust for your orator, and that the said Eva E. Richmond never paid to your orator nor to said James A. Richmond nor to said nervine company any consideration for said shares of stock so assigned to her as aforesaid.

Your orator further represents that said nervine company was so organized for the sole and exclusive benefit of your orator in order to enable him to carry on said business of manufacturing and selling said medicine under the name of said nervine company; that your orator was the actual owner of all the capital stock of said nervine company and the actual owner of said outfit, fixtures, apparatus, formula, trade-mark of a man falling in a fit, and the right to use the same and to manufacture and sell said medicine,

111 although the same were held in trust for him as aforesaid.

That in pursuance of the object and design of the organization of the said nervine company your orator was made the general manager thereof and moved his said business from Chicago, Illinois, to the said city of St. Joseph, in the State of Missouri, and began the manufacture and sale of said medicine under the name of said nervine company and continued to carry on said business under that name from about the month of December, A. D. 1884, till some time during the month of January, A. D. 1886.

That the said nervine company did not at the time of its organization as aforesaid nor at any time thereafter, except as hereinbefore and hereinafter stated, have, possess, own, or acquire any money or property of any kind or description nor any real, personal, or mixed estate or assets of any kind or character.

That during all the said time your orator so carried on said business under the name of said nervine company as aforesaid he furnished all the money, material, and fixtures necessary to carry on said business and paid all the expenses incurred in and about said business and expended large sums of money in advertising the said business and used as trade-marks on all the medicine so manufactured and sold by him during that time his said picture or portrait and his picture or portrait surrounded by four globes, which he had previously adopted and used as trade-marks on medicines manufactured and sold by him while doing business at Chicago,

Illinois, under the name of the "World's Medical Association" as aforesaid.

And your orator further represents that he never conveyed, sold, or transferred said last two above-named trade-marks to said James A. Richmond nor to said nervine company nor to any other person or persons nor corporation whomsoever, and that he never
112 gave to said nervine company the right to use the same after the said month of January, A. D. 1886.

Your orator further represents that some time during the said month of January, A. D. 1886, he lost his mind, and that by reason of his mental infirmities he was unable to assume the management of said business; that on or about the month of June, A. D. 1886, on account of trouble growing out of his disordered mind, he was confined in the county jail in the said county of Buchanan, in the State of Missouri; that he remained in said jail till about the month of August, A. D. 1886, when he was adjudged to be insane by the circuit court in and for the county of Buchanan and State of Missouri; that he was by order of said court thereupon committed to the State asylum or hospital for the insane near said city of St. Joseph; that he was kept confined in said asylum or hospital for many months and was not formally released and discharged therefrom till on or about the month of January, A. D. 1889.

That during all the said time, to wit, from the said month of January, A. D. 1886, to the said month of January, A. D. 1889, your orator was legally disqualified from transacting any business on account of said insanity, and that during all that time no conservator had been appointed for your orator to transact his business for him.

That immediately after your orator was so confined in said asylum or hospital as aforesaid the said nervine company, through said Michael Draut, Eva E. Richmond, and James A. Richmond, who were then acting as its officers, wrongfully and fraudulently took possession of said business of manufacturing and selling said medicine, so carried on and owned by your orator as aforesaid, and have wrongfully and fraudulently manufactured and sold and shipped large quantities of said medicine throughout the United States, to wit, more than sixty thousand dollars' worth (as he is informed and believes); that the said nervine company has received large
113 profits from said sales, to wit, the sum of many thousands of dollars, the exact amount being unknown to your orator; that said nervine company has appropriated said profits to its own use; has refused and still does refuse to account for the same or any part thereof to your orator; that said nervine company has refused and still continues to refuse to surrender to your orator the said business, outfit, apparatus, and fixtures used in carrying on the same, and during all the time the said nervine company has so wrongfully and fraudulently been carrying on said business it has wrongfully and fraudulently been using all your orator's said trade-marks on all said medicine so sold by it as aforesaid. By means of all said wrongful and fraudulent acts of said nervine company your

orator has been damaged in a large sum of money, to wit, the sum of forty thousand dollars.

That your orator is informed and believes that before he was formally discharged from said asylum and while he was still legally disqualified from doing business thesaid nervine company wrongfully and fraudulently pretended to adopt the said picture or portrait trade-mark of your orator, so printed on the front of said cartoons or caddies so used and adopted by your orator as aforesaid.

And your orator further states that afterwards, to wit, on or about the 8th day of December, A. D. 1887, while your orator was still legally disqualified from doing business on account of not being released and discharged from said asylum or hospital, the said nervine company, without the consent or knowledge of your orator, wrongfully and fraudulently made application to the Patent Office at Washington, D. C., to have said trade-mark registered as the trade-mark of said nervine company; that afterwards, to wit, on the 6th day of March, A. D. 1888, while your orator was still legally disqualified from doing business as aforesaid, the said nervine company wrongfully and fraudulently, and without the consent
114 or knowledge of your orator, procured the registration of said trade-mark in the Patent Office of the United States upon a statement and a declaration which were absolutely false in the material facts therein contained. Copies of said trade-mark and said statement are hereunto attached and are marked respectively Exhibits "C" and "D."

And your orator further represents that having duly adopted as trade-marks said devices, consisting of his said picture or portrait and his said picture or portrait surrounded by four globes, in the month of July, A. D. 1884, as aforesaid, and having affixed the said devices as trade-marks to his said merchandise, and having continuously used said devices as trade-marks affixed to his merchandise in the sale thereof from the said month of July, A. D. 1884, to the said month of January, A. D. 1886, as aforesaid, and the said devices having been continuously used as trade-marks on said merchandise so manufactured by your orator under the name of the "World's Medical Association," which said merchandise belongs to your orator and has been continuously on sale as his goods and extensively sold by his agents throughout the United States at wholesale and retail from the said month of July, A. D. 1884, to the date of the filing of the original bill herein by said nervine company, and desiring to avail himself of all benefits and advantages under and by virtue of the act of Congress approved March 3, A. D. 1881, in such cases made and provided, your orator did, immediately after his discharge from said asylum, take the necessary steps to have said designs registered in the Patent Office of the United States as his trade-marks; but the registration of your orator's said trade-mark of his said picture or portrait which he had so adopted as aforesaid and used on the sale of the said goods as a trade-mark was rejected
115 by the Commissioner of Patents because said nervine company had secured a regis- thereof on said statement and declaration hereinbefore named, which your orator charges

are false as to the material facts contained therein, and were made without his knowledge or consent.

That on the 18th day of February, A. D. 1889, your orator did file in the Patent Office of the United States, at Washington, his application for the registration of his trade-mark of his said picture or portrait surrounded by four globes, and did pay into the Treasury of the United States the sum of twenty-five dollars and complied with all the regulations prescribed by the Commissioner of Patents for such cases, and did accompany his application for registration of said trade-mark by a written declaration verified by himself to the effect that he had at the time a right to the use of said trade-mark so sought to be registered as aforesaid, and that no other person or persons, firm or corporation, had or has the right to use the same, either in the identical form or in any such near resemblance thereto as might be calculated to deceive; that it is used in foreign commerce, to wit, with Canada; that the descriptions and fac-similes presented for record truly represented the trade-mark sought to be registered, and that he is a citizen of the United States; and thereupon said trade-mark was duly registered and a certificate of registry duly issued to your orator in the name of the United States of America, under the seal of the Department of the Interior, and signed by the Commissioner of Patents, which certificate of registry is numbered 16405, is dated the 19th day of March, A. D. 1889, and is in full force and effect, and which certificate is here in court, marked Exhibit "E."

And your orator further represents that as soon as he learned that said nervine company had so obtained the registration of said portrait trade-mark in the Patent Office of the United States, as aforesaid, he began proceedings of interference in said Patent
116 Office against said nervine company to have said registration of said portrait trade-mark set aside and registration thereof made in the name of your orator; that he vigorously prosecuted said proceedings till some time during the month of May, A. D. 1889, when he received notice that in pursuance of the prayer of said original bill so filed by said nervine company a rule or order had been entered by this court against your orator without notice to your orator restraining and enjoining him from further prosecuting said proceeding till the further order of this court; that your orator is entitled to have set aside said registration of said trade-mark so procured by said nervine company and is entitled to the registration thereof in said Patent Office in his own name under the provisions of said act of Congress as aforesaid; that your orator is informed by his counsel and verily believes that the equity and justice of said controversy in said proceeding of interference so begun by him in said Patent Office against said nervine company is with your orator, and if said rule or order of this court is dissolved said Patent Office will, on the merits of the case, set aside said registration of said trade-mark so obtained by said nervine company and grant registration thereof to your orator.

Your orator further shows that he is still the exclusive owner as aforesaid of all said trade-marks, outfits, fixtures, apparatus, formula,

and the exclusive right to manufacture and sell said medicine; that said medicine is bought by the trade and customers under the implied guaranty of genuineness afforded by means of said trade-marks, and that your orator estimates the par value of the same to be not less than seventy-five thousand dollars, lawful money of the United States.

And your orator further shows that if the said nervine company ever acquired the right or license to use said trade-marks and formula and to manufacture said medicine it was only dur-
117 ing the time he was general manager, and that if such right or license was so acquired it ceased at the time your orator ceased to be the general manager of said nervine company as aforesaid, and that your orator has long since revoked the same, which he lawfully might do.

And your orator further shows that he has heretofore respectfully notified said nervine company not to use said trade-marks, outfits, fixtures, apparatus, or formula, and not to manufacture or sell said "Samaritan nervine," but that said nervine company has disregarded and still continues to utterly disregard his protest against the use of the same and the manufacture and sale of said medicine, and has continued to affix to said medicines so sold by it said designs as trade-marks, and your orator is informed and believes that said nervine company is about to manufacture and sell at wholesale about forty thousand (40,000) dollars' worth of said medicine, so that the market will be stocked for a long time, to the great pecuniary loss and damage of your orator, who must thereby wrongfully and unjustly be deprived of the legitimate profits that should be derived by him from sales of said medicines.

And your orator further shows that the reason of his not instituting a suit sooner to restrain said nervine company and its officers, servants, and agents from infringing on his said trade-marks and using said formula, fixtures, outfit, and apparatus, and manufacturing and selling said nervine is the fact that he has been laboring under great pecuniary embarrassment, and for a great part of the time since his release from the asylum as aforesaid has actually been physically unable to bear the nervous strain necessarily incident thereto, which facts and his disability before his release from said asylum have been wrongfully and unjustly taken advantage of by said nervine company, its officers and servants, to the great loss and damage of your orator, as he verily believes, to the
118 extent of many thousands of dollars.

And your orator further shows that he has used due diligence in the matter, and that he is advised and believes and therefore avers that unless the said nervine company, its officers, agents, and servants, be enjoined from its aforementioned wrongful acts and from a continuance of said wrongful acts great and irreparable injury and damage will be caused to your orator in the premises.

Forasmuch, therefore, as your orator is without remedy in the premises except in a court of equity, and to the end that your orator may have relief in the premises in this honorable court, where only adequate remedy can be had, he prays:

First. That said nervine company may be required to answer by its officers every material allegation in this cross-bill contained as fully and to the same extent as if they were specially interrogated to every separate allegation thereof.

Secondly. That the said nervine company may be required to render a full, true, and complete account of all profits of every kind or description made or derived by its use of your orator's aforementioned trade-marks, outfit, fixtures, apparatus, and formula and a full, complete, and true account of all the profits received by it from the sale of all the medicine so sold by it upon which it so used or affixed your orator's said trade-marks as aforesaid since the said month of January, A. D. 1886, and that it may be decreed to pay over to your orator the full and entire amount of such profits.

Thirdly. That the said nervine company may be required by order of this court to produce in this court all the books, papers, records, and a record of all its sales of said medicine since
119 said month of January, A. D. 1886, in order that an account-ing of such sales and the profits arising therefrom may be truly had.

Fourthly. That the said nervine company, its officers, agents, employees, and servants, forever be enjoined and restrained from in any manner making, manufacturing, selling, bartering, or disposing of or offering for sale any of said medicine known as "Samaritan nervine" or any medical preparation or compound of substantially the same descriptive properties as said "Samaritan nervine" or as those described in said registration numbered 16405, as aforesaid, and from using as an affix to any such preparation or compound or any wrapper or receptacle for the same any of the said trade-marks hereinbefore named or any material part of any of said trade-marks, including the portrait of your orator.

Fifthly. That the said nervine company may be by order of this court required to surrender to your orator all the said fixtures, outfit, and apparatus, including all the wood cuts, engravings, electrotypes, and all other property, books, papers, and effects appertaining to said business belonging to your orator now in possession of said nervine company.

Sixthly. That the said rule or order of this court heretofore entered against your orator enjoining and restraining him from prosecuting said interference proceedings and application for registration of trade-mark in the said Patent Office be set aside and vacated, and that the said nervine company be forever enjoined and restrained from in any manner making any defense thereto or interfering with your orator in said proceedings.

Seventhly. That a preliminary order may be granted without delay restraining the wrongful acts of the said nervine company as hereinbefore set forth and of its officers, agents, em-
120–136 ployees, and servants until the decision of a motion for an injunction by reason of the premises, inasmuch as there is danger of irreparable injury to your orator from delay, and that your orator may have such other and further relief in the

premises as the nature and circumstances of the case may require and as shall seem just and proper.

SAMUEL A. RICHMOND.

WM. HENRY BROWNE,
CONNOLLY & MATHER,
C. W. WOOLVERTON,
Solicitors and of Counsel, &c.

STATE OF ILLINOIS, } ss:
Sangamon County, }

Samuel A. Richmond, the complainant in the above and foregoing cross-bill, being first duly sworn according to law, says that he has read the foregoing cross-bill, and that all the facts stated therein are true and correct of his own knowledge except as to those stated on information and belief, and as to those he believes them to be true.

SAMUEL A. RICHMOND.

Subscribed and sworn to before me this 2nd day of July, A. D. 1889.

JAMES T. JONES, *Clerk.*

(Indorsed:) Filed July 3rd, 1889. James T. Jones, clerk.

137 In the Circuit Court of the United States for the Southern District of Illinois.

THE DR. S. A. RICHMOND NERVINE COMPANY }
vs.
SAMUEL A. RICHMOND. }

The Answer of Dr. S. A. Richmond Nervine Company to the Amended Cross-bill of Samuel A. Richmond, Complainant in said Cross-bill.

This defendant, reserving to itself all right of exception to the said amended cross-bill, for answer thereto saith that it admits that it filed in said court its original bill of complaint, wherein it prayed relief as stated in said cross-bill, and admits that the complainant in said cross-bill filed answer thereto; without this, that any denial or statement in said answer contained is good or sufficient in law, either in form or substance, or constitutes any defense, in whole or in part, to any of the matters in said original bill of complaint stated; admits that the complainant in said amended cross-bill was prior to the second day of May, A. D. 1882, engaged in the making and selling of the proprietary medicine known as "Samaritan nervine" at the city of St. Joseph, in the State of Missouri, and that he then used as a trade-mark on the said medicine so sold by him the figure of a man falling in a fit, as set out in the amended cross-bill, and that on or about the said last-named day a corporation was incorporated and organized under and pursuant to the laws of the State of Missouri by the name of "Dr. S. A. Richmond Medical

Company," which said company thereafter carried on the said business of manufacturing and selling said medicine, all of which was done in the manner and under the circumstances hereinafter stated and not otherwise.

138 And, further answering, this defendant states that in the year 1871 one Eva E. Richmond was married to the complainant in said cross-bill, and that said cross-complainant and the said Eva E. Richmond have ever since been and still are husband and wife; that at the time of said marriage the said cross-complainant had no property and the said Eva E. Richmond, from funds and property received by her as gifts from her father, from time to time contributed to his support up to the year 1874, during all which time they resided in the county of Mercer, in the State of Missouri; that during the said year 1874 the said cross-complainant with his said wife removed to the city of St. Joseph, in said State.

That at the time of the arrival of said cross-complainant in St. Joseph he was entirely without means and destitute, and about the latter part of the year 1875 the father of his said wife then gave her the sum of one thousand dollars ($1,000.00), which she thereupon advanced to said cross-complainant to enable him to manufacture and advertise said "nervine;" that he was then making said medicine in a kettle upon the cooking stove in his dwelling, using the money so advanced him by his wife to procure the drugs and material therefor and to print circular letters and other matter advertising the same.

That she continued to so advance him money received as gifts from her father as aforesaid in various sums up to about the 10th day of August, 1877, at which time the said cross-complainant sold forty acres of land owned by the said Eva in Harrison county, in said State of Missouri, for the sum of fourteen hundred dollars ($1,400.00), which said sum of money the said Eva thereupon advanced to said cross-complainant to be used in the manufacture of said medicine.

139 That defendant is informed and believes that the said Eva continued to advance to said cross-complainant various other sums of money until the 29th day of June, 1879, on which day the said cross-complainant was in equity and good conscience indebted to her on account of the moneys so advanced and used in said business in a sum amounting to at least ten thousand dollars ($10,000.00), and on said last-mentioned day said cross-complainant made and executed to the said Eva on account of said indebtedness his promissory note, whereby he promised one day after the date thereof to pay to the said Eva E. Richmond the sum of ten thousand dollars, for value received, with interest at the rate of ten per cent. per annum from said date.

That on the 26th day of April, 1882, the said cross-complainant, being then indebted to the said Eva in a large sum of money, to wit, as this defendant is informed and believes, to an amount equal to the principal of said note, and being then insolvent, procured articles of association to be executed by James A. Richmond, John Albus

Jr., and Michael Draut for the formation of a corporation named "Dr. S. A. Richmond Medical Company," which said articles were duly filed in the office of the recorder of deeds of Buchanan county, in said State of Missouri, and in the office of secretary of state of said State, from which last-named office a certificate of incorporation of said company thereupon duly issued, and the said persons so associated and their successors thereupon became, under and by virtue of the provisions of the laws of the said State of Missouri in such case made and provided, a body corporate for the term of fifty years thereafter for the purpose of manufacturing and selling the said "Samaritan nervine" and such other medical compounds, chemical substances, or patent medicines as said corporation might
140 from time to time deem expedient, with power to have succession by its said corporate name for said period of fifty years, to *sue* and be sued, complain and defend in any court of law or equity, to make and use a common seal, to purchase, hold, mortgage, and convey real and personal estate, to appoint officers and agents, to make by-laws, and to do such other acts as were necessary and incident to the said purposes of its incorporation, and its said corporate powers thereupon became vested in three directors named in said articles of association, a true copy of which is hereto attached and marked "Exhibit A," which said corporation so incorporated and organized is the same corporation mentioned by the same name in cross-complainant's amended cross-bill.

That the capital stock of said corporation so formed was five thousand dollars ($5,000.00), divided into fifty shares of the par value of one hundred dollars each; that on the first day of May, 1882, the said cross-complainant sold to said corporation for the sum of five thousand dollars the formula, the recipe for the mixing, making, and preparing of said "Samaritan nervine," with the full and exclusive right to make, use, and vend the same; the trade-mark of a man falling in a fit mentioned in the amended cross-bill, with the exclusive right to use the same in the sale of said medicine; the formula for compounding and making a certain medicine called "Dr. Richmond's cathartic and nervine pills" and the exclusive right to make, use, and vend the same; the good will of complainant's business of making, using, and vending said "nervine" and "pills," together with certain leases and personal property, consisting of drugs, manufactured medicines, stationery, boxes, furniture, printing machinery, and fixtures, all being of the reasonable value of five thousand dollars.

141 That the said cross-complainant, on account of his said indebtedness to the said Eva E. Richmond, caused forty-seven of the fifty shares of the capital stock of said corporation to be assigned and issued to her, which shares of stock, by virtue of the provisions of the laws of the State of Missouri, then and there became the separate property of the said Eva E. Richmond, free from the interference, control, or possession of said cross-complainant.

That at the time of the organization of said corporation the said cross-complainant was by said corporation constituted its president and general manager at a salary of two hundred dollars ($200.00)

per month, for which said sum said cross-complainant undertook, promised, and agreed to give to said corporation his entire skill and services in the manufacture and sale of said medicine and the management and direction of all the business affairs of said cross-complainant, and was by him from time to time received as full compensation for his services as such president and general manager up to the time of the assignment hereinbefore mentioned.

That the said corporation, from the time of its organization up to the 13th day of May, A. D. 1884, continued to manufacture and sell the said "Samaritan nervine," and during all that time expended large sums of money, the proceeds of said business, in advertising said medicine in various newspapers throughout the United States and the British possessions of North America, so that by reason of said advertising and the notoriety that had been thereby given to said medicine and to its said trade-mark the same had become of great value.

That during said time, to wit, on or about the first day of December, A. D. 1883, the said corporation determined that
142 the appearance of the packages of said "Samaritan nervine," which had theretofore been sold in plain five-ounce bottles, with plain wrappers and labels thereon, with the exception of the trade-mark, consisting of the device of a man falling in a fit, would be greatly improved by putting the same up in eight-ounce bottles with the picture of cross-complainant as the originator or inventor of said medicine blown in the same and enveloped in caddies or cartoons having said cross-complainant's picture or portrait printed on the one side thereof and his picture or portrait surrounded by four globes or hemispheres printed on the other side thereof, and that thereby the sale of said medicine could be greatly increased, and that said pictures and devices so blown in said bottles and printed upon said wrappings would constitute a further trade-mark and safeguard against the sale of fraudulent imitations of said medicine by other parties than said corporation, and said corporation thereupon, *and* the instance and by the advice of cross-complainant, adopted said pictures as additional trade-marks and caused a large number of engravings and electrotypes of said pictures of cross-complainant and of cross-complainant surrounded by four globes or hemispheres to be engraved, electrotyped, and prepared for said corporation, and purchased a large quantity, to wit, one car-load, of said eight-ounce bottles with the picture of cross-complainant blown therein and many thousands of said caddies or cartoons with the said portrait of cross-complainant and the said portrait of cross-complainant surrounded by four globes or hemispheres printed thereon, as hereinbefore described, and caused to be prepared and printed many thousands of circulars, circular letters, and other printed advertisements containing descriptions and copies of said devices and of the bottles so adopted and of the completed packages
143 of said medicines so contemplated with said devices thereon as they would appear after the adoption and carrying into effect of the changes hereinbefore enumerated, and caused said circulars, circular letters, and other advertising matter to be

distributed to dealers in medicines and to the general public, by which said circulars, circular letters, and advertisements the trade and public were informed that on and after the first day of May, 1884, the said medicine would be put up in bottles and packages, as therein and hereinbefore described, with the said devices blown and printed thereon, as above set forth, and that none of said medicine would thereafter be genuine without said inscriptions; a true copy and fac-simile of one of which said circulars or advertisements is hereto attached, marked Exhibit "B;" for all of which the said corporation, under the management and control of cross-complainant and at his particular direction, paid large sums of money for postage, printing, and the purchase of bottles and other material, and for freights and charges for the transportation thereof, all of which was done and paid prior to the 13th day of May, 1884, and the said corporation thereafter used the same as the packages and wrappings in which the said medicine was put up and sold by said corporation, and that said corporation prior to the said 13th day of May, 1884, sold throughout the United States and the British possessions of North America a large quantity of the said medicine so put up in the bottles and wrappers containing the trade-marks, pictures, and devices last herein described.

That on the said 13th day of May, 1884, the cross-complainant in said cross-bill, together with one James A. Richmond, his brother, and one Winslow Judson, were the directors of said corporation, the cross-complainant being then president thereof, they having been elected such directors by the vote of said Eva E. Rich-
144 mond, then owning as aforesaid forty-seven of the fifty shares of the stock of said corporation.

That on said last-named day, the affairs of said corporation being then in a prosperous condition and the said Winslow Judson being then absent from the State of Missouri, the said cross-complainant and the said James A. Richmond met, as directors of said corporation, at the office of said company, and then and there fraudulently for the purpose of getting the property of said corporation, including the trade-marks and formula and good will aforesaid, into their own hands without subjecting the same to the just demands of the creditors of said corporation, which then and there owed to divers persons about fifteen thousand dollars, directed the cross-complainant as president of said corporation to make an assignment of all its property, effects, and credits for the benefit of its creditors under and pursuant to the laws of the State of Missouri in such case made and provided, and thereupon the said cross-complainant executed a deed of assignment to all said property, including the formula aforesaid and the right to compound and sell said medicines and the trade-marks aforesaid, to one John F. Tyler, which said assignment then and there, under and by virtue of the provisions of the laws of said State of Missouri, became a proceeding in the circuit court of said State within and for Buchanan county, in said State, which was a court of general jurisdiction.

That at the time of said assignment the said trade-marks were alone reasonably worth the sum of twenty-five thousand dollars, and

in addition thereto the said corporation had effects and credits consisting of sums due from solvent persons which would be paid upon demand, medicines of a fixed market value, and bottles, stationery, and fixtures reasonably worth the further sum of seventeen thousand dollars.

That, in pursuance of their said design to defraud the creditors of said company and to get all the property thereof into their own hands, said cross-complainant and the said James A. Richmond caused the appraisers appointed by the judge of said circuit court, under and pursuant to the laws of the State of Missouri in such case made and provided, to believe that all the property of said corporation, including said trade-marks, formula, and good will, were worth no more than the sum of nine hundred and ninety-eight dollars, at which said sum all said property was thereupon duly appraised, and said assignee, at the instance of said cross-complainant and James A. Richmond, thereupon appeared in said court and procured an order for the sale of all of said property at private sale, and said assignee thereupon, on the 16th day of May, 1884, sold all of said property for the sum of one thousand dollars to one C. W. Wolverton, of Tuscola, Illinois, who was then and there the attorney of said cross-complainant, as stated in cross-complainant's affidavit filed in this cause.

That on the 30th day of May, 1884, one Harlan P. Hubbard, a creditor of said corporation, filed in said circuit court of the State of Missouri within and for Buchanan county his motion to set aside said sale on the ground that the same was fraudulent and made and procured by said Wolverton and said cross-complainant and said James A. Richmond for the purpose of defrauding the creditors of said corporation, a true copy of which said motion was afterward by said circuit court seen, heard, and considered, and the said sale was, on the 23rd day of June, 1884, by the order of said court thereon, duly made and entered of record, set aside, avoided, and held for naught; a copy of which said order and judgment of the court is hereto attached and marked "Exhibit D."

That afterward, to wit, on the 28th day of August, 1884, the said John F. Tyler, being duly authorized so to do by the laws of the State of Missouri and by the order of the said circuit court of said State, sold to James A. Richmond, hereinbefore named, all the right, title, and interest of said assignee in and to the said formula or recipe for the manufacture of said "Samaritan nervine" and the right to manufacture and vend the same, also the trade-marks and all other devices used by said corporation in connection with such manufacture and sale, for the sum of twenty-five thousand dollars ($25,000.00), which said sale was duly approved and confirmed by said court on the 11th day of November, 1884, and the said James A. Richmond on the same day paid to the said assignee in cash the sum of two thousand five hundred dollars ($2,500.00), and on the 20th day of the same month executed to the said assignee his bond or writing obligatory under his hand and seal, whereby he bound himself, his heirs, executors, and administrators, to pay to said as-

signee on demand the further sum of twenty-two thousand five hundred dollars ($22,500.00), the payment of which said bond was then and there secured by deed of mortgage on a large amount of real estate of said James A. Richmond therein described, a copy of which mortgage is hereto attached and marked "Exhibit E," and was also further secured by said James A. Richmond by the delivery to said Tyler as collateral security for the payment of said bond a certain note executed by the said Samuel A. Richmond and Eva E. Richmond to the said James A. Richmond for the sum of five thousand dollars ($5,000.00), secured by mortgage upon certain real estate in the city of St. Joseph, Buchanan county, Missouri,
147 then owned by the said Eva E. Richmond.

That before the 10th day of December, 1884, the said James A. Richmond had by various mesne assignments passing from said C. W. Wolverton to A. B. Powell and from said A. B. Powell to said James A. Richmond come into possession of all the claim which the said C. W. Wolverton made or set up to the property of said corporation or any part thereof, including the said formula, good will, and right to manufacture and vend the said medicine, together with said trade-marks and devices, under and by virtue of the pretended purchase from said assignee hereinbefore set forth; and on or about the said 10th day of December, 1884, a corporation was incorporated and organized for the purpose of manufacturing and selling the said "Samaritan nervine" and such other medical compounds, chemical substances, and patent medicines as said corporation may from time to time deem expedient under the name of "Dr. S. A. Richmond Nervine Company," which is the same corporation which is defendant in complainant's cross bill.

That by the terms of its articles of association and the laws of the State of Missouri this defendant corporation was to continue for the term of fifty years and the amount of its capital stock was fixed at two thousand dollars, divided into twenty shares of the par value of one hundred dollars each.

That eighteen shares of said capital stock *was* paid by and issued to said James A. Richmond and one share of said capital stock was paid by and issued to said Michael Draut and one share of said capital stock was paid by and issued to one John Christ.

That on the 11th day of December, 1884, the whole of the paid-up stock of this defendant corporation was assigned and delivered to the said John F. Tyler, assignee, to hold as collateral security
148 for the payment of the said sum of twenty-two thousand five hundred dollars so due from the said James A. Richmond to the said Tyler as assignee of the said Dr. S. A. Richmond Medical Company; and thereupon the said Tyler conveyed and assigned to the said James A. Richmond all his right, title, and interest as assignee in and to the formula, recipe, rights, good will, and trade-marks hereinbefore described and purchased by the said James A. Richmond from said assignee at the sum and price of twenty-five thousand dollars ($25,000.00), as aforesaid; and on the same day and at the same time this defendant corporation purchased from the said James A. Richmond all the right, claim, and demands so

purchased by him from said assignee and so acquired by him through mesne assignments and conveyances from the said Wolverton; and thereupon such proceedings were had by the said "Dr. S. A. Richmond Medical Company" that the said last-named corporation paid off of its own property in the hands of the assignee the claims and demands of all creditors of said last-named corporation except about the sum of five thousand dollars ($5,000.00), due to one H. P. Hubbard upon final compromise as balance on his claim and which was afterwards paid him in "nervine" medicine made and furnished by said "Dr. S. A. Richmond Nervine Company," so that the said sum of twenty-two thousand five hundred dollars named in the bond of said James A. Richmond to the said assignee and secured to be paid as aforesaid remained and was the unincumbered property of said "Dr. S. A. Richmond Medical Company" free and clear from the claims and demands of all creditors or other persons whomsoever, and the said Eva E. Richmond, as owner of forty-seven fiftieths of the stock of said "Dr. S. A. Richmond Medical Company," was entitled to forty-seven fiftieths of said sum and of the property of said corporation.

That thereupon the said assignee, by mutual consent of
149 the said "Dr. S. A. Richmond Medical Company" and the stockholders thereof and of the creditors of said corporation, was discharged, and the stockholders of said company, together with its board of directors, in due form released the said James A. Richmond from the payment of the said amount of twenty-two thousand five hundred dollars named in his said bond, and the said James A. Richmond, in consideration of such release, caused to be assigned and transferred to the said Eva E. Richmond fifteen shares of the capital stock of this defendant corporation, and caused one share of the said stock to be transferred, assigned, and issued to one Michael Draut upon the same consideration, and retained four shares thereof for himself in consideration of the said sum of twenty-five hundred dollars paid by him for the formula, recipe, rights, good will, and trade-marks aforesaid, which said sum so applied to the payment of the debts of the said "Dr. S. A. Richmond Medical Company."

That afterward, to wit, in May, 1889, said Eva E. Richmond assigned one share of said stock to one Henry Christ, so that at the time of the filing of said cross bill and ever since and now the said Eva E. Richmond is the owner in law and equity of fourteen shares of the capital stock of said company, having paid for the fifteen shares originally assigned to her the sum of twenty-one thousand one hundred and fifty dollars. The said Michael Draut is the owner of one share of said stock, having paid therefor, as this defendant is informed and believes, the sum of four hundred and fifty dollars, and the said James A. Richmond is the owner of four shares of said stock, but as to the amount that the said James A. Richmond paid therefor this defendant has no knowledge or information except as hereinbefore set forth, and as to whether or not there was any
150 arrangement entered into by and between the said James A. Richmond and said cross-complainant in fraud upon the

laws of the State of Missouri, by which the said James A. Richmond procured the issue of said four shares of stock without any consideration therefor, this defendant has no knowledge or information except as hereinbefore fully stated and such as it has received from the cross-bill and affidavits filed by the said James A. Richmond and the said cross-complainant in this court.

That on the said 11th day of December, 1884, this defendant corporation employed the complainant in the cross-bill as general manager and treasurer of this defendant corporation at a salary of two hundred dollars per month and for the further compensation of all the said medicine manufactured by said company which the said cross-complainant should desire to use to supply his patients, which said employment was accepted by cross-complainant, and he then and there entered upon the duties of the same and promised and agreed and undertook, for the considerations aforesaid, to give his knowledge and skill and all necessary time to the management of the affairs of said company in said capacity, and from that time until on or about the 12th day of January, 1886, during all of which time the said cross-complainant had charge in his said capacities of general manager and treasurer of all the affairs of said corporation, and regularly, from month to month, received in consideration therefor the said sum of two hundred dollars per month, and in addition thereto received all the medicine desired and used by him in treating his patients, which said medicines were reasonably worth at retail prices the sum of three thousand dollars per year, and during all that time the said cross-complainant as the general manager of said company had sole and exclusive direction of all its advertising and designing and the purchase of its ma-
151 terial and the putting up of its medicines and of all other matters connected with the manufacture and sale of said medicine and *with the manufacture and sale of said medicine and* with the business of said company, and during all that time, by the direction of said cross-complainant, all the "Samaritan nervine" manufactured and sold by this defendant was placed in eight-ounce bottles, with the picture of said cross-complainant blown therein, as hereinbefore described, which said bottles were wrapped and enveloped in caddies or cartoons containing printed on one side thereof the picture or portrait of said cross-complainant and on the other side thereof the picture or portrait of said cross-complainant surrounded by four globes or hemispheres in the manner hereinbefore and in said cross-bill particularly described and set forth; and the said medicine so put up and wrapped and the devices aforesaid was, under the direction of said cross-complainant, advertised by this defendant at great cost and expense and became and was extensively known by its said description throughout the United States and the British possessions of North America.

That about the said 12th day of January, 1886, said cross-complainant left the service and employment of this defendant, and ever since that time and up to the time of the granting of the preliminary injunction herein this defendant has continued, at great expense, to advertise the said medicine, together with the trade-marks

and devices hereinbefore described and to introduce the same to the public in the form and by the description hereinbefore set out and in connection with the trade-marks and devices aforesaid, so that the said medicine has now become generally known both by the trade and the general public throughout the United States and the British possessions of North America under and in
152 connection with the descriptions, devices, and trade-marks hereinbefore described and not otherwise; and in so advertising and introducing said medicine this defendant has become largely indebted to divers persons employed to assist in the same, to wit, in the sum of several thousand dollars, and this defendant has no property or assets other than the said formula, good will, and right to manufacture said medicine and the trade-mark aforesaid and the furniture and other property used in connection with the manufacture of said medicine.

That all of said furniture and fixtures are not worth more than one hundred and fifty dollars, and that the appliances used by this defendant in its lab-ratory for the manufacture of said medicine consist of a stove and vat for the mixing and cooking of said medicine and boxes and barrels used as receptacles for the material for same and one bottler, all of which are nearly worthless except for use in connection with the manufacture of said medicine.

And, further answering, this defendant denies that "Dr. S. A. Richmond Medical Company" was incorporated or organized for the sole and exclusive benefit of the said cross-complainant or for any other purpose or in any other manner than hereinbefore particularly set forth.

Denies that said cross-complainant carried on the business of manufacturing and selling said "Samaritan nervine" in the name of said "Dr. S. A. Richmond Medical Company" otherwise than as the agent and employé of said company, as hereinbefore fully set forth.

Denies that said cross-complainant furnished any of the money, outfit, apparatus, fixtures, or property used in said business, but avers that all said money and property was furnished by said
153 Eva E. Richmond as aforesaid and was by said cross-complainant sold to the said company for the benefit of said Eva E. Richmond for the sum of five thousand dollars, as hereinbefore stated.

Denies that the said cross-complainant ever expended any sum of money whatever in the manufacture or sale of said medicine or in advertising the same.

Denies that the said "Dr. S. A. Richmond Medical Company" ever at any time became involved in any indebtedness beyond the value of its assets or its ability to pay or that it ever became otherwise involved.

Admits that the said "medical company" made an assignment by which all its property of every kind and description passed to and became vested in one John F. Tyler, assignee, under and by virtue of its deed of assignment and the laws of the State of Missouri in such case made and provided.

Denies that the said John F. Tyler sold any of said property so assigned to one C. W. Wolverton except as hereinbefore particularly set forth, and admits that the said Wolverton made an assignment conveying all interest claimed by him through such pretended purchase from said assignee to one A. B. Powell, and denies that the said Powell ever recovered possession of said property by any legal process whatever.

Admits that the cross-complainant carried on the manufacture of said medicine in Chicago at some time during the summer of the year 1884 under the name of the "World's Medical Association," but avers that he ceased said manufacture and sale in Chicago before the first day of October in said year.

Admits that the said manufacture of said medicine was so carried on by said cross-complainant in Chicago under and by virtue of said pretended purchase by said Wolverton of said assignee
154 and said assignment by said Wolverton to said Powell and of an assignment of the said pretended interest by said Powell to the said James A. Richmond.

As to whether or not the said cross-complainant used any of the caddies or cartoons or trade-marks or bottles hereinbefore described in the manufacture and sale of said medicine in the city of Chicago this defendant has no knowledge or information sufficient to form a belief, but charges that if any of them were so used they were used wrongfully and in fraud of the rights of said "Dr. S. A. Richmond Medical Company" and its said assignee.

Denies that said cross-complainant originated any device or trade-marks hereinbefore described except as the employé and agent of the said "Dr. S. A. Richmond Medical Company," as hereinbefore set forth.

Denies that said cross-complainant has continued to use the said devices or trade-marks or any of them from the month of July, 1884, to the time of the filing of the original bill herein or during any portion of said time.

Denies that said cross-complainant has expended any money in advertising said medicine or trade-mark.

As to whether or not the cross-complainant entered into a contract with one James A. Richmond for the purchase of any right or property from A. B. Powell, as stated in the cross-bill, or to purchase anything from said John F. Tyler, assignee of "Dr. S. A. Richmond Medical Company," as stated in said cross-bill, or as to whether or not the said James A. Richmond made any such purchase for or on behalf of said cross-complainant this defendant has no knowledge or information sufficient to form a belief.

Denies that said cross-complainant ever, by any such purchase or by any other means, became the owner of any of said
155 rights, property, devices, or trade-marks.

Denies that the cross-complainant was interested in any right, property, device, trade-mark, or other thing whatsoever transferred by James A. Richmond to the defendant except as hereinbefore fully set forth.

Denies that no part of the capital stock of this defendant corpo-

ration was paid, but alleges that said capital stock was fully paid up and in the hands of the persons named in its articles of association, as stated in the cross-bill.

Denies that any share of stock in this defendant corporation was ever held by said Eva E. Richmond or transferred to her to be held in trust for the cross complainant.

Denies that this defendant corporation was incorporated or organized for the benefit of said cross-complainant.

Denies that the cross-complainant was the actual owner of any of the capital stock of said "nervine company," and denies that the said cross-complainant was the actual owner of the outfit, fixtures, apparatus, formula or trade-mark, or the right to use the same or the right to sell or manufacture said medicine.

Denies that cross-complainant ever furnished any money, property, or effects or other thing whatsoever to be used in the manufacture of said medicine in the name of this defendant corporation or since the organization of this defendant corporation, and denies that he ever carried on or intermeddled with said business except as its agent or servant or paid any money whatever in or about the transaction of said business or the advertising of said business, or that he incurred any expense whatever in or about said business.

Denies that the cross-complainant ever lost his mind or was in any manner adjudged insane by any court, officer, or tribu-
156 nal except as hereinafter stated—that is to say, that on or about the 18th day of June, 1886, the cross-complainant shot and killed one James W. Strong, who was, in connection with the said C. W. Wolverton, the attorney for cross-complainant in matters growing out of the assignment of the "Dr. S. A. Richmond Medical Company," for which said act he was indicted for murder by a grand jury legally constituted in the criminal court of the State of Missouri for Buchanan county, in said State, a court having full jurisdiction in the premises, and was thereupon put upon his trial in said court for said crime, and defended himself in said trial upon the ground that he was not of sound mind at the time of such shooting, and was thereupon acquitted upon the sole ground that he was not of sound mind at the time of said shooting, and it was thereupon adjudged by said court, under and pursuant to the laws of the State of Missouri in such case made and provided, that he be confined in a State institution for the insane in said State called "State Lunatic Asylum Number Two;" that the cross-complainant was, in pursuance *to* such judgment, placed in said insane asylum, and that on or about the 14th day of November, 1887, he escaped from said asylum to said State of Illinois, where he has since resided.

Denies that cross-complainant was insane during any portion of said time or before or since.

That as to whether or not said James A. Richmond was guilty of any fraud upon the rights of cross-complainant with reference to the four shares of stock of this defendant held by him, this defendant has no knowledge or information sufficient to form a belief, but denies that either Eva E. Richmond or Michael Draut or any officer

or agent of this defendant other than the said James A. Richmond was guilty of any fraud, wrong, or evil practice toward the
157 said cross-complainant in any matter connected with the business of this defendant.

Admits that this defendant registered the picture of the cross-complainant as a trade-mark at the time in the bill stated, and alleges that the said trade-mark was rightfully the property of this defendant, as hereinbefore stated.

Denies that the cross-complainant had any right to register as a trade-mark his picture surrounded by four globes, as hereinbefore described.

Denies that said picture was the property of said cross-complainant or had been first by him used, and alleges that the said picture and trade-mark had been first used by the "Dr. S. A. Richmond Medical Company" and was at the time of said registration the property of this defendant, as hereinbefore stated, and that the registration thereof by the said cross-complainant as his trade-mark was procured by fraud, covin, misrepresentation, and falsehood.

Denies that the right of this defendant to use the said trade-marks hereinbefore described or either of them has expired.

And this defendant denies all and all manner of unlawful combination and confederacy whereof *he* has by said cross-bill — charged; without this, that any other matter, cause, or thing in the said cross-bill of complainant contained material or necessary for this defendant to make answer to and not herein and hereby well and sufficiently answered, confessed, traversed, and avoided or denied is true to the knowledge or belief of this defendant; all which matters and things this defendant is ready to aver, maintain, and prove as the court shall direct, and asks to be hence dismissed with its reasonable costs and charges in this behalf sustained, and
158 that it have relief according to the prayer of its original bill.

Wherefore the said corporation, the "Dr. S. A. Richmond Nervine Company," has, by its proper officers, caused its corporate name to be hereto signed and its corporate seal hereto affixed.

THE DR. S. A. RICHMOND NERVINE CO.,
By EVA E. RICHMOND, *President.*

[SEAL.] MICHAEL J. DRAUT, *Secretary.*

Eva E. Richmond upon her oath says that she is president of the "Dr. S. A. Richmond Nervine Company;" that the facts stated in the foregoing answer, as also the denials therein contained, are true.

EVA E. RICHMOND.

Subscribed and sworn to before me this 3rd day of August, A. D. 1889.

JOHN F. IMEL,
Notary Public.
[SEAL.]

My commission expires May 14, 1891.

Banning & Banning, Huston & Parish, Stephen S. Brown, and ——— ———, counsel for the Dr. S. A. Richmond Nervine Company.

159 EXHIBIT A.

Be it known that we, James A. Richmond, of Douglas county, Illinois; John Albus, Jr., and Michael Drout, of the city of Saint Joseph, Buchanan county, Missouri, do by these presents form a body politic and corporate, pursuant to the provisions of chapter twenty-one (21) of the Revised Statutes of the State of Missouri and the several acts of the General Assembly amendatory thereof and supplementary thereto, and for that purpose we do hereby make the following certificate of facts:

First. The corporate name of said company is hereby certified to be "Dr. S. A. Richmond Medical Company."

Second. The corporation is to be located at the city of Saint Joseph, in the county of Buchanan and State of Missouri.

Third. The amount of the capital stock of said corporation shall be five thousand dollars ($5,000), divided into fifty (50) shares of the par value of one hundred dollars each, all of which has been *bona fide* subscribed and the whole of which has been actually paid up in lawful money of the United States and is in the custody of the persons named as the first board of directors.

Fourth. The names and places of residence of the several stockholders and the number of shares subscribed by each are as follows, viz:

Names.	Places of residences.	Number of shares.
James A. Richmond.	Douglas county, Illinois.	48, forty-eight.
John Albus, Jr.....	St. Joseph, Missouri.....	1, one.
Michael Drout.....	St. Joseph, Missouri.....	1, one.

Fifth. The number of the board of directors of said company shall be three, and the names of those agreed upon for the first year are as follows, viz: James A. Richmond, John Albus, Jr., and Michael Drout.

169–170 Sixth. The corporation shall continue in existence for the term of fifty years.

Seventh. The purposes for which this company is formed are to manufacture and sell a medical compound known as Dr. S. A. Richmond's Samaritan nervine and such other medical compounds, chemical substances, or patent medicines as said corporation may from time to time deem expedient.

In testimony whereof we have hereunto subscribed our names and affixed our seals this 26th day of April, A. D. 1882.

JAMES A. RICHMOND. [SEAL.]
JOHN ALBUS, JR. [SEAL.]
MICHAEL J. DRAUT. [SEAL.]

STATE OF MISSOURI, } ss.
County of Buchanan, }

Be it remembered that on this 26th day of April, A. D. 1882, before me, the undersigned, a notary public within and for said county, personally came James A. Richmond, John Albus, Jr., and Michael Draut, who are personally known to me to be the same persons whose names are subscribed to the foregoing instrument of writing as parties thereto, and severally acknowledged that they executed the same for the uses and purposes therein mentioned.

In testimony whereof I have hereunto subscribed my name and affixed my seal, at my office, in the city of St. Joseph, the day and year last aforesaid.

JOHN F. TYLER,
Notary Public. [SEAL.]

My commission expires January 25, A. D. 1883.

171 Then afterwards, to wit, on the twenty-first day of August, in the year eighteen hundred and eighty-nine, came again the complainant, by its solicitors, and filed its replication to the answer of Samuel A. Richmond; which replication is as follows, to wit:

Circuit Court of the United States, Southern District of Illinois.

THE DR. S. A. RICHMOND NERVINE COMPANY }
vs. } In Equity.
S. A. RICHMOND. }

The Replication of The Dr. S. A. Richmond Nervine Company, Complainant, to the Answer of Samuel A. Richmond, Defendant.

These repliants, saving and reserving unto themselves, now and at all times hereafter, all and every manner of benefit and advantage of exception which may be had or taken to the manifold insufficiency of the said answer, for replication thereunto say that they will aver, maintain, and prove their said bill of complaint to be true, certain, and sufficient in law to be answered unto, and that the said answer of this defendant is uncertain, untrue, and insufficient to be replied unto by these repliants; without this, that any other matter or thing whatsoever in said answer contained material or effectual in the law to be replied unto and not herein and hereby well and sufficiently replied unto, confessed or avoided, traversed or denied, is true; all which matters and things these repliants are and will be ready to aver, maintain, and prove as this honorable court shall direct, and humbly pray as in and by their bill they have already prayed.

BANNING & BANNING & PAYSON,
Solicitors for Complainants.

(Indorsed:) Filed August 21, 1889. James T. Jones, clerk.

171–1 *Epitome No. 1.*

Evidence of complainant, appellant in this court, The Dr. S. A. Richmond Nervine Co.

The following witnesses were called, duly sworn, and examined on the part of the complainant below (appellant in this court):

EDWIN E. PRATT, 55 years of age, of Chicago, connected with the A. N. Kellogg Newspaper Company, publishers. He says he has known Dr. S. A. Richmond since about 1880; did some advertising for Dr. Richmond in 1882 under a contract executed between Dr. Richmond and the Kellogg Company. Payment for advertising done under said contract was secured by a deed from Samuel A. Richmond and his wife, Eva E. Richmond, to John A. Reed, dated January 4th, 1882; it was a trust deed. Witness as president and agent of the Kellogg Publishing Company made the contract with Dr. S. A. Richmond on or before January, 1882. To secure the payment of the amount which might become due for said advertising the deed of trust before mentioned was executed by Samuel A. Richmond and wife to John A. Reed, trustee; that there became due on said
171–2 contract on July 3rd, 1882, $7,346.50, no part of which has ever been paid. The property covered by said deed of trust was sold, but proceeds were not sufficient to cover prior encumbrances. Another payment under said advertising contract was due on the 1st of January, 1883; no part of that has been paid. The Kellogg Co. endeavored to collect what was due them and found that Richmond had nothing out of which they could make any money; that it took all the property he had to satisfy other claims; that there was no property that the company of the witness could get hold of. No part, either of the principal or interest, had been paid up to the date of the taking of this testimony. Dr. Richmond said the property covered by the deed of trust would be ample to pay the prior encumbrances and also the amount due for advertising, but it yielded nothing to the company of witness. He says more than half of said indebtedness accrued before May 1st, 1882. Witness, during the recess taking deposition, ascertained the exact amount of the indebtedness from S. A. Richmond to the company of witness was $7,346.64. Of this there was earned previous to May 1st, 1882, $4,094.07. (This testimony runs from page 177 to 184, inclusive, O. R. The deed carries it on to page 190, inclusive.)

HENRY M. BUTLER, attorney on part of appellant, 35 years of age; residence, Columbus, Ohio, says: Know of a suit brought by Crebaugh and Broadbeck before justice of the peace against Dr. S. A. Richmond and R. Jones & Son, druggists, garnishees, to satisfy a claim against said Richmond for advertisement, seeking to subject money alleged to be due from R. Jones & Son to S. A. Richmond. Witness appeared for John F. Tyler, of St. Joseph, Missouri, who claimed to be the assignee, and as such entitled to the money due from R. Jones & Son. Witness further said a deposition, purport-

ing to be that of Dr. S. A. Richmond, was filed in the case
171–3 and was read before the justice; that in said deposition Dr. Richmond testified in substance that he had some time before that failed, principally from an attempt to run a hotel; that he had sold and assigned *bona fide* to John F. Tyler all his accounts, and he also stated that a stock corporation had been formed under the laws of Missouri for the purpose of handling his medicines. Dr. Richmond stated the amount of the capital stock and gave the names of the stockholders and the number of shares held by each. Witness does not recollect the exact number held by each, nor exactly how many stockholders there were, but recollects that Dr. Richmond stated that he owned none of the stock; that his wife owned the majority, and that a gentleman whose name witness does not remember, but who he believed owned one share. Witness says that a motion was made to dismiss the case; motion overruled, and case taken on error to a higher court, but Tyler compromised with the plaintiffs in the action before the case was reached. Witness said the action was brought against S. A. Richmond or the S. A. Richmond Company to recover money due for advertising respectively in three different papers. The witness was unable to find the original papers in the case and hence stated from memory what occurred. Witness stated on cross-examination that he did not know Dr. S. A. Richmond; had never seen his signature. All he knows as to whether the deposition was that of Dr. S. A. Richmond is that he directed the assignee at St. Joseph, Mo., to take the testimony of witnesses, and among others that of Dr. S. A. Richmond, and that a deposition purporting to be from Dr. S. A. Richmond was received by the justice of the peace and read by the witness as at-
171–4 torney for the assignee, Tyler; that he has no knowledge in the matter except what he has stated. (This deposition extends to and includes page 198.)

THEODORE H. PECK; age, 37 years; residence, Columbus, Ohio; occupation, deputy clerk of the court of common pleas, is a witness on behalf of The Richmond Nervine Company, appellant.

Mr. Peck, as clerk of the court of common pleas, testifies that he has made a search for the original papers in the case referred to by Mr. Butler, the preceding witness, and has been unable to find them. (This includes to page 200, inclusive.)

A. L. FRETCHEY, of Columbus, Ohio, justice of the peace before whom the case mentioned by the last two witnesses was tried; also two other cases against Richmond for pay for advertising. He thinks judgments were rendered in each case, but is not certain and does not recollect whether Richmond's deposition was read in the case spoken of by Attorney Henry M. Butler. (To and including 204.)

JAMES F. MCFADDEN; age, 33 years; resident of Columbus, Ohio, is a justice of the peace; testified that he is the successor in the office of justice of the peace of A. H. Fretchey, witness, one before men-

tioned. He identifies papers found on his files, one of T. W. Collier against Dr. S. A. Richmond & Company and Myers and Bricknell against Dr. S. A. Richmond & Company. These are actions against S. A. Richmond for advertising.

He states that he is unable to find the papers spoken of by the witness Butler and Fr tchey, justice, being the case of Myers and Bricknell, R. Jones & Son, garnishee. (This includes to and including page 207.)

(Petition in error of common pleas can be omitted.)

171–5 The transcript before the justice of the peace on file as part of the record shows that an action was brought June 13, 1882, by the plaintiff against S. A. Richmond, doing business as S. A. Richmond & Company. The amount claimed was $24.10.

Answer was filed by the garnishee in the first case mentioned, which was overruled and judgment rendered for the plaintiffs in said suit against S. A. Richmond, doing business as S. A. Richmond & Company, against the garnishee, and whereupon said case was taken to the common pleas on error. In the answer of the garnishees in the case of F. W. Collier against Dr. S. A. Richmond & Co., defendants, they filed a letter dated St. Joseph, Mo., June 8th, 1882, from J. F. Tyler, attorney-at-law, in which he states that he has purchased all of the accounts of Dr. S. A. Richmond & Co., and notifies the parties in Columbus, the garnishee, to remit to him whatever may be due upon their books to the S. A. Richmond Company, as he has succeeded to all the rights of said Richmond in said medicine, and that there accompanied said letter one dated St. Joseph, June 1st, 1882, addressed to Messrs. R. Jones & Son, of which the following is a copy:

ST. JOSEPH, MO., *June 1st*, 1882.

Messrs. R. Jones & Son bought of Dr. S. A. Richmond & Co., on acc't of Samaritan nervine, $175. Please pay the above amount to Col. James F. Tyler and oblige—

S. A. RICHMOND.

The garnishees states that in their original answer they had stated what amount was due from them regardless of the assignment of Dr. S. A. Richmond & Co. to Tyler: that on the 25th day of June, 1882, R. Jones & Son were again notified by said John F. Tyler, per attorney, in writing, that said balance of account due from them to said Richmond and Co. had been *bona fide* assigned and transferred to John F. Tyler prior to the commencement of the

171–6 action and the issuing of the order of attachment: that subsequently, on or about July 10th, 1882, R. Jones & Son had been served with two affidavits, one made by S. A. Richmond, of St. Joseph, Mo., and in substance stating that on June 1st, 1882, he sold and transferred *bona fide* and for full value said balance of account of $136.96 due him, Dr. S. A. Richmond, from said R. Jones & Son to John F. Tyler, and also an affidavit made by said Tyler stating that he was the owner of said account by assignment from Richmond.

(Exhibit B is the case of F. W. Collier against ——— ———.)

(Exhibit C is the case of Myers and Bricknell against S. A. Richmond Company, defendants, of which we have already spoken, and simply contains docket entries hereinbefore referred to.)

The bill of particulars of Myers and Bricknell against the S. A. Richmond Company, dated June 14, 1882, for advertising in the "Columbus Dispatch" from February 7th, 1882, to May 20th, 1882, is $86.65.

HARLAND P. HUBBARD, of the city of New Haven, State of Connecticut, being duly sworn and examined, said in substance: Am acquainted with S. A. Richmond Medical Company of St. Joseph, Mo.; became acquainted with Dr. S. A. Richmond in the fall or winter of 1882; met Dr. Richmond, the president, and Mr. Windslow Judson, the secretary, of the S. A. Richmond Medical Company, in New York and made contracts with them for advertising. The acquaintance continued until the fall of 1885. Dr. Richmond was president of the company at that time—that is, the fall of 1885 or up to the time the company assigned; does not know that there was any president after that. Witness transacted business both with Dr. Richmond and Mr. Judson. The company became indebted to witness in the sum of $33,000 during 1883; the liabilities ceased to accrue at the time of the assignment of the Rich-
171–7 mond Medical Company; witness stopped all their advertising which was then running. At the time of the assignment of the Richmond Medical Company met Mr. Judson, the secretary, in New York, and while they were at dinner they received a telegram from Dr. Richmond, saying that the company had made an assignment; that Mr. Judson, the secretary, expressed great surprise and stated that there was no need of it or reason for it; that they had ample money to pay all their bills as fast as they accrued and advised witness to go immediately to St. Joseph and take steps to prevent the assignment being carried out. Witness said he went and took such action as caused the sale under the assignment to be set aside and the trade-mark put up again for sale after reasonable notice was given. After considerable litigation the trade-mark was sold for $25,000. One day in the fall of 1885, I think it was, Dr. Richmond sent for witness and told him he, the doctor, had $6,000 in gold and $7,000 in medicine, which was all he had in the world; he would give us the whole of it to balance the claim against the Richmond Company, which witness agreed to do; and the settlements were made, suits were withdrawn, and witness came home. Witness said he learned after the assignment what corroborated the statement of the secretary, Judson, that the company was solvent at the time the assignment was made; that, as under the peculiar contracts witness had with the company its liabilities did not become due until certain sales of medicine were made unless by such action as they did take, they made it important that an account be demanded in full settlement. Witness said in his business with the company he learned of the amount of medicine manufactured by the company and delivered to its several agents; that Charles N.

Cartendon, of New York, was agent for the New England
171–8 and Middle States and South Atlantic States. Lord, Owen & Co., of Chicago, were agents for all the other States east of the Rocky mountains, and Reddington & Co., of San Francisco, were agents for the Pacific coast.

MICHAEL DROUT sworn and examined: Lives in St. Joseph, Mo.; has lived in St. Joseph about 17 years; is 29 years of age; am acquainted with Samuel A. Richmond; known him upwards of ten years. When I first knew him he was a manufacturer of nervine and other medicines in St. Joseph, Mo. At that time, when I first knew him, he was in the Opera House block, on 5th street; he was doing business on his own account, manufacturing Dr. Richmond's Samaritan nervine (page 248). The Dr. S. A. Richmond Medical Company was formed in May, 1882, by James A. Richmond, John Albus, Jr., and myself. It continued to do business until May, 1884. Dr. S. A. Richmond was the general manager; had charge of all the designing, of advertisements, placing contracts for same, manufacturing the medicine, and superintending the business in general. Witness was secretary of the company part of the time and continually employed in the office of the company during its existence, and was a member of the board of directors part of the time. Books were kept showing the proceedings of the meetings of
the board of directors from time to time. I have the book
171–9 in my possession and here produce it. This book contains the record of proceedings of the meetings of the board of directors of the S. A. Richmond Medical Company. Beginning on page 252, the witness states the shareholders in the Dr. S. A. Richmond Medical Company during the time of its existence were James A. Richmond, John Albus, Jr., M. J. Drout, John F. Tyler, Windslow Judson, Eva E. Richmond, and John Christ, as near as witness can recollect.

The capital stock of the company was $5,000, divided into fifty shares, of which Eva E. Richmond held, at the time of the assignment, forty-seven shares. They were transferred to her on the 5th day of May, 1882. Witness produces the transfer book showing transfer of shares of the Dr. S. A. Richmond Medical Company; also the stock book of said company; also the stock receipts for shares in the Dr. S. A. Richmond Medical Company. They are stock certificates. The certificates offered in evidence show as follows:

No. 1, 48 shares, issued to James A. Richmond, dated the 1st day of May, 1882, with assignment endorsed on the back.

No. 6 is for 47 shares, issued to Eva E. Richmond and dated 5th day of May, 1882.

No. 3 is for 1 share, issued to Michael Drout, dated 1st of May, 1882, with the assignment on the back of it, dated the 31st day of May, 1882.

No. 7 is for 1 share, issued to James A. Richmond, dated the 30th day of May, 1882, with the assignment on the back by James A. Richmond to John Christ, dated the 10th day of December, A. D. 1884.

No. 4 is for 1 share of stock, issued to John F. Tyler, dated the 1st of May, 1882, with the assignment on the back by John F. Tyler to Eva E. Richmond, dated the 13th day of November,
171-10 1882.

No. 9 is for 1 share of stock, issued to Michael J. Drout the 20th day of November, 1882, assigned by Michael J. Drout on the back to Eva E. Richmond, dated the 27th day of February, 1883.

No. 14 is for 1 share of stock, dated 27th day of March, 1883, to Eva E. Richmond.

(NOTE.—These certificates are all offered in evidence and appear in the record, marked "Exhibit B." It is needless to have them printed. There is no dispute about what they show.)

(The witness exhibits the transfer book in which is recorded the transfers of stock of the S. A. Richmond Medical Company.)

(There is also offered in evidence the transfer of one share of stock in the Dr. S. A. Richmond Medical Company by John F. Tyler to Eva E. Richmond, dated the 15th of November, 1882.)

There was also offered in evidence the transfer of one share of stock in the Dr. S. A. Richmond Medical Company by Eva E. Richmond to Michael J. Drout, dated the 20th day of November, 1882, a copy of which transfer is attached to and made a part of the deposition and marked "Exhibit D."

Also the transfer of 17 shares of the capital stock of the Dr. S. A. Richmond Medical Company to Eva E. Richmond by James A. Richmond and dated the 5th day of May, 1882. A copy of
171-11 this transfer is attached to and made a part of the deposition, marked "Exhibit E."

Another is transfer by Drout of one share in said company to James A. Richmond, dated 31st of May, 1882, marked "Exhibit F."

Also transfer by John Albus, Jr., of one share of stock in said company to S. A. Richmond, dated the 5th of May, 1882, marked "Exhibit G."

Also transfer of one share in said company to Tyler by James A. Richmond, dated May 1st, 1882, marked "Exhibit H."

(All these transfers and certificates are attached to and made part of witness's deposition in the record, but as there is no question about them there is no use in printing them as part of the record.)

Dr. Richmond informed witness that he was insolvent. He had contracted extensively with newspapers for advertising, and when the bills came due he was unable to meet them. He was sued by creditors and they have never been paid. They remained on the record as judgments unsatisfied. He thinks that this indebtedness of Dr. S. A. Richmond amounted to fifty or sixty thousand dollars. Witness says that the medicine (Samaritan nervine) was put up in a five-ounce bottle wrapped in a paper, with a picture of a man falling in a fit on the front; that Dr. Richmond superintended the advertising and designing of the wrappers and the advertis-
171-12 ing for the company; that the latter part of 1883 the company determined to change the plans of the wrappings

and the size of the bottles, the latter to be enlarged to eight-ounce bottles, with Dr. Richmond's picture blown in it, with his name and St. Joseph, Mo., on the front, and on the other side the word "Samaritan," and on the other side of the bottle the word "nervine." The wrapper was to be changed to a caddy or cartoon with Dr. S. A. Richmond's picture on the front and on the back Dr. S. A. Richmond's picture between four globes and on the top of the caddy a picture of a man falling in a fit. This change was determined upon about December, 1883. Dr. Richmond had charge of the designing of such advertising—made all the necessary arrangements for the intended change. The change was to go into effect on the 1st of May, 1884, and in pursuance of what was done engravings were made for the printing of caddies and all other necessary matter. The work was done by the Chicago Engraving Company. The engraving consisted of Dr. S. A. Richmond's picture engraved on wood. His picture between four globes and other engravings we had made for the change of advertising circulars, and so on. Witness produces the bills which were rendered by the Chicago Engraving Company for engraving and electrotyping. Some of them were made out against the Dr. S. A. Richmond Medical Company and others against Dr. S. A. Richmond.

Bills were paid by the Dr. S. A. Richmond Medical Co. as follows—I should give the dates of the bills: Bills of December 28, 1883; February 12, 1884; February 26, 1884, were paid by the Dr. S. A. Richmond Medical Company on or about March 8, 1884. The bill of December 28, 1883, is for electrotype autograph. The bill of February 12, 1884, is for engraving portrait, engraving two figures, and electrotyping and lettering the envelope. Bill of February 26, 1884, is for engraving globes and portrait and electrotyping the same. The engraving was made for the printing of caddies and other advertisements that were gotten up for the change I have mentioned. The portrait that is spoken of and the globes were for the caddy or cartoon and other advertisements.

171–13

The witness examines bills rendered by the Chicago Engraving Company for engraving and electrotyping, &c., dated March 4, April 10th, April 12th, April 16th, April 24th, 1884, and a receipted statement of May 1st, 1884, and says the heading of the large circular that the company published was changed, it having been composed of four globes, with "World's hotel" cut in the center. This cut of the World's hotel was removed and instead there was inserted the head of Dr. Richmond.

Witness presents a cut which contains a picture of the change, which shows the portrait of Dr. S. A. Richmond inserted instead of "World's hotel." Witness states that they have been using the circular containing the picture of the World's hotel and the four globes surrounding it from the time of the incorporation of the medical company, and that these circulars and cuts were paid for by the company, the last batch being paid for May 1st, 1884. (One of the circulars is attached, marked "Exhibit J," but will be omitted from the record as unnecessary, as the fact clearly appears

without the exhibit and also copies of the bills last shown, "Exhibit K." As there is no question as to their contents, they are omitted from the printed record.)

The witness states that these wood cuts, engravings, and electrotypes were used for the purpose of printing the caddies or
171–14 cartoons and other advertisements, such as circulars, &c.

Witness produces the books of the medical company, which show that the transactions in regard to the engravings, portraits, &c., before spoken of, and on page 56 is entered a credit to the Chicago Engraving Company of bill of April 10, 1884, in the day book of the Dr. S. A. Richmond Medical Company.

The bills of March 4, April 10, April 12th, 16th, and 24th, 1884, were made in a consolidated bill dated May 1st, and paid by the Dr. S. A. Richmond Medical Company and charged to expense account of May 5th, 1884, on the cash book of the Dr. S. A. Richmond Medical Company. The exact entry on the books is as follows:

"May 5th. Expense, Chicago Engraving Co..... $294 25"

Dr. Richmond was paid $200 per month and received his pay from the time the company was incorporated until the time of the assignment. Dr. Richmond acted as treasurer of the company the latter part of the time. The books of the company were kept under the doctor's supervision and he had access to them at all times. Circulars announcing the change in the size of bottle and manner of putting up the medicine, &c., was sent to customers and to the public. They were notified that the change would take place on May 1st, 1884, and circulars announcing this fact were extensively circulated. Circulars were printed and circulated in the 1st part of 1884—that is, the latter part of January or 1st of February. The printing and distribution of these circulars was under the supervision of Dr. Richmond. The circulars contained a fac-simile of the front and back half of the cartoon or caddy as it would appear, together with a notice warning the public that none would be genuine unless thus encased, and also bearing the following
171–15 inscription: "Have Dr. Richmond's picture blown in the bottle, his picture to be printed on two sides of the caddy or cartoon and the bottle enlarged."

The circulars were printed by C. P. Kingsbury, of St. Joseph, Missouri. The circular that I have in my hand is one that was printed and distributed and is identical with those distributed among customers and the public announcing the change. It is attached and marked "Exhibit L." (It is not shown in printed record, not being necessary.)

It was printed for the Dr. S. A. Richmond Medical Company and gotten up by Dr. S. A. Richmond for the company and at his instance, and everything was paid for by the company. The circulars were printed some time in January or early in February, 1884.

Kingsbury was paid thirteen or fourteen hundred dollars for printing during the months of January, February, March, and April, and up to the 15th of May, 1884.

The company also advertised in newspapers of various kinds and by pamphlets and by pamphlet purporting to be the minutes of the Missouri annual conference of the Methodist Episcopal Church, held March 5th to 10th, 1884. The pamphlet described contains an advertisement on the back of the cover of the front view of the cartoon as it would appear after the 1st of May, 1884, when the change before mentioned would take place. This circular was widely distributed. (It is in evidence and marked "Exhibit M," but not reproduced, as there is no dispute about it.)

Orders were placed for the new kind of large-sized bottles; also for the caddy or cartoon with reference to making the change. The order for the bottles was placed with William McCully & Co., Pittsburg. The paper I hold in my hand, continued the witness, is a bill against the Dr. S. A. Richmond Medical Company, dated April 26, 1884, is for twenty-five and one-eighth gross of eight-
171–16 ounce paned bottles and twenty-four and eleven-twel-ths gross two-ounce pill bottles, together with notice of draft on the company, dated April 28th, 1884, and a draft dated April 28, 1884, at sight, for $1483 4, which was paid by the company to the State savings bank.

(All these papers are offered in evidence, are on file and marked "Exhibit N," but there being no question about them they are not — be printed.)

These bottles were received the latter part of April or 1st of May, 1884, and were the eight-ounce bottles spoken of heretofore and made in pursuance of the change I have mentioned. Witness describes the bottle as an eight-ounce bottle with Dr. Richmond's portrait blown on one side, on the front, with his name over the picture, and at the bottom "St. Joseph, Missouri," and on one side of the bottle the word "Samaritan," and on the other side of the bottle the word "nervine." These bottles were received while Dr. Richmond was superintendent and treasurer of the company and were paid for with the money of the Dr. S. A. Richmond Medical Company. A record of the transaction will be found on page 115 of the cash book of the Dr. S. A. Richmond Medical Company, as follows:

"Mdse., William McCully & Co. ..... $138 34"

under date of May 5th, 1884. There was also an order placed for a large amount of bottles (about a car-load), which were en route at the time of the assignment. They were not received by the company, but were en route at the time of the assignment.

As an officer and stockholder and employé of the company, I was familiar with all the facts I have stated and *that* this new style in large bottles made for the company.

There was also an order placed for cartoons to be used after May 1st, 1884, for wrapping or encasing the Samaritan nervine—that is, about five hundred and fifty dollars' ($550) worth or-
171–17 dered and paid for by the Dr. S. A. Richmond Medical Company, and part of which were received before the assignment. As shown by the books, on March 24th a remittance of $120 was made by the company, and on April 14th one of $531,

and the entry of March 24th appears on the cash book, page 111; and that of April 14th on page 113, the entries being "March 24th, Novelty Paper Box Co., Phila., paid them on account $120," and on April 22nd, on page 112 of the cash book, appears "The Novelty Paper Box Co., check No. 569 returned and cancelled, $100, with his credit. The entry of April 14th is, "Novelty Paper Box Co. remitted $531." These remittances were for orders placed for the cartoons. I think there were about 55,000 cartoons ordered.

The cartoon handed to witness is exactly like those that were ordered except the words "put up by the Dr. S. A. Richmond Nervine Company" instead of "put up by the Dr. S. A. Richmond Medical Company." Witness identifies the cartoon as the one ordered for the Richmond Medical Company. The cartoon I hold in my hand shows it was "prepared and manufactured by the Dr. S. A. Richmond Nervine Company." On the old cartoon it was "prepared by the Dr. S. A. Richmond Medical Company." There was some of the cartoons on hand at the time of the assignment. These cartoons and caddies were in use at the time of the assignment and had been in use before.

(This cartoon was offered and was made "Exhibit O," but, there being no dispute about it, it is not printed in the record.)

The assignment was made on the 13th day of May, and the first sale to Wolverton was made five or six days thereafter.

Witness held one share of stock in the Dr. S. A. Richmond Medical Company. Bought it of Dr. S. A. Richmond and paid him for it $100; owned it at the time of the assignment.

171–18 Dr. Richmond left St. Joseph about the 1st of July, 1884, and went to Chicago, Illinois. The material on hand and bottles and furniture which had been sold to Wolverton were removed to Chicago, Illinois, by Dr. Richmond. The cartoons that were on hand at the time of the assignment were used, but slips were printed and pasted over the words "prepared by the Dr. S. A. Richmond Medical Company," changing it to "prepared by the World's Medical Association of Chicago, Ill." The business at Chicago was carried on by James A. Richmond and Dr. S. A. Richmond, of St. Jo. They represented that they were the owners of it by reason of the sale made by the assignee (John F. Tyler) to Mr. Wolverton, and they had arranged with him. Dr. Richmond, after moving to Chicago, issued circulars stating that he had removed the business to Chicago. The circular exhibited to witness is one of those dated July 12, 1884. He continued in business in Chicago about three months. I helped him manufacture the medicine at Chicago. I think he manufactured about fifty gross. He quit business there about October, 1884.

(The circular above referred to is attached and marked "Exhibit P." There being no question about its contents, it is not printed in the record.)

The Dr. returned to St. Joseph the latter part of October, 1884, and the present company, the appellant herein, was formed about the 1st of December, 1884. The incorporators were John Christ, James A. Richmond, and witness. The sale to Wolverton by the

assignee, under which James Richmond claimed, was set aside by the circuit court, and the cuts, effects, and assets of the company afterwards sold by the assignee to James A. Richmond for $25,000, upon which he paid $2,500 in cash. The balance, $22,500,

171–19 was not collected of James A. Richmond.

The indebtedness of the assigning medical company was paid out of its assets partly and partly by the present company—that is, the Dr. S. A. Richmond Nervine Company. The claim of Harland P. Hubbard was settled, part paid in cash and the balance was paid in Samaritan nervine, which was furnished by the Dr. S. A. Richmond Nervine Company—that is, the present company (the appellant). The nervine company paid about fifty or fifty-five hundred dollars in medicine to Hubbard. Dr. S. A. Richmond furnished no part of this medicine. The Dr. was elected treasurer and general manager of the S. A. Richmond Nervine Company when it was organized. He was to receive $200 a month for his services, and in addition was to receive, free of charge, sufficient medicine to supply his patients. He continued in the service of the company until January, 1886.

The company furnished the medicine for his patients and made no charge. The order books show this. His income would average $450 per month. I know this from my personal knowledge of his income. He kept a private book with reference to his patients. The medicines were put up by the nervine company in the same style and size cartoon with the exception of the name being changed that was used by the medical company before the assignment. The nervine company sold about fifty gross per month, which was shipped to all parts of the United States and Dominion of Canada. The company continued to do business after Dr. Richmond left. The company has at all times used the cartoons and bottles heretofore mentioned as being used after the change—that is, after May 1st, 1884.

After the organization of the nervine company the stock issued was assigned to Col. John F. Tyler as collateral security

171–20 to secure the payment of the James A. Richmond indebtedness incurred for the purchase of the trade-mark, good will, and so on. He held it until the settlement with Hubbard, about November, 1885. After that the stock was released and the stockholders of the Richmond Medical Company were released. James A. Richmond never paid any part of the $22,500. The Dr. S. A. Richmond Nervine Company undertook to pay and did pay the $22,500, and James A. Richmond assigned to the company all the property, effects, rights, and privileges which he had acquired by virtue of his purchase from the assignee of the medical company.

171–21 Witness further says (O. R. to p. 285):

At the time of the formation of the Richmond Medical Co. Dr. Richmond was harrassed with debt.

Witness further sayeth he received dividends on his stock; says that the trade-marks, devices, &c., were never used on any other medicines, and only on the Samaritan nervine; says Dr. Richmond

brought back from Chicago some personal effects, all told with probably $200. It was a part of the property he had obtained from Wolverton, before stated. He says the assets of The Richmond Nervine Co., the appellant, consisted in the formula, trade-marks, good will, &c.

8th. Mr. CHARLES WEST, being duly sworn and examined, says:

I am 70 years of age; reside in St. Joseph, Mo.; am a book-keeper and accountant; took charge of the books of the Richmond Medical Company in the fall of 1883 and continued in charge until the assignment, May 13th, 1884; kept a day book, journal, cash book, and ledger. The day book is missing.

Witness examines various bills presented and paid by the Rich-
mond Medical Co.; identifies them as having been pre-
171–22 sented to that company and paid by it. This included the bills heretofore spoken of as being presented by the Kellogg Engraving Co. of Chicago by Mr. Hastings, and the bills and drafts presented and drawn by McCully & Co., of Pittsburgh, for bottles.

Witness says the books of the company were correctly kept; that the bills were entered in the day book, and that said book would show the payment of the bills. Witness identifies the draft drawn by William McCully & Co. for $148 and $148.34 for bottles, &c., drawn on the Richmond Medical Co. and paid by said company on May 5th, 1884. Witness also identifies the bills of Kingsbury, of St. Joseph, rendered against the Richmond Medical Company and paid by the company; also a number of bills of Kingsbury paid by the medical company in March, April, and May, 1884.

These are the same bills referred to by the witness Michael Drout.

Witness says that Dr. S. A. Richmond had a private account and was charged with what he received. Said account appears in the ledger, pages 188 to 214, inclusive; that he was credited in said account for services $200 per month.

He says the Novelty Paper Box Company of Philadel-
171–23 phia were paid by the S. A. Richmond Medical Co. in March, April, and May $120 and $53.1 on account of orders for caddies, cartoons, &c., the same as referred to by these accounts, the bills being the same as referred to by the witness Michael Drout.

9th. JOHN F. TYLER, being duly sworn and examined, says: I am an attorney-at-law; fifty-one years of age; reside at St. Joseph, Mo.; know Dr. Richmond; says the Dr. began manufacturing his medicine in a small way; that he was poor; that when the Richmond Medical Co. was organized the Dr. was not worth anything; that the Dr. so informed the witness. Witness was Dr. Richmond's attorney; says Dr. Richmond told him that his, Dr. Richmond's, wife, Eva E. Richmond, furnished the means, or that he got it, the means, through her to start his business; that a majority of the stock of the S. A. Richmond Medical Co. was issued to Eva E. Rich-

mond because she had supplied the money to enable him to prosecute the business; says that in the suits brought at Columbus he intervened as assignee of Dr. Richmond, and Dr. Richmond testified in said suits that he had no interest in the stock of the company, and that the debts or amounts due from the garnishees in said action had been in good faith assigned, and that he had no
171–24 claim on said accounts. He said that on the organization of the Richmond Medical Co. he desired the stock issued to his wife in consideration of what she had furnished and done; that he desired to make her safe. The S. A. Richmond Medical Co. assigned to witness for the benefit of creditors.

Said that the property was appraised, and on the statement of Dr. Richmond it was appraised at $998 and was sold to Wolverton for $1,000. This sale was subsequently assailed on the ground of inadequacy of price and set aside by the circuit court in which said trust of assignment was administered and the property, trade-mark, good will, and other assets subsequently sold under an order of court to James A. Richmond for $25,000, he paying $2,500 in cash and securing the balance by mortgage on real estate in Illinois.

Witness says that he observed that a picture of Dr. Richmond was blown in the bottles which were on hand at the time of the assignment and some that were received soon after. His picture was also printed on cartoons and caddies which were on hand
171–25 at the time of the assignment. The bottles, cartoons, and wrappers were the same as are shown to me. Dr. Richmond informed witness that they had bought about $500 worth. He also said that this property belonged to the Dr. S. A. Richmond Medical Co.

Witness as assignee settled with the stockholders of the Richmond Medical Co. and perfected a settlement, so that he did not collect the balance of $22,500 due from James A. Richmond on account of the purchase. Witness settled with the court November 20th, 1885; says that Dr. Richmond got the books of the assigning company; says that Mrs. Richmond gave a mortgage on her home in 1880. The mortgages were upon lots of hers worth in 1877 about $6,000. Dr. Richmond stated to witness that the stock in the S. A. Richmond Medical Co. was given to Mrs. Richmond in consideration of money she had advanced, &c. Witness recognizes the portrait of Dr. Richmond and his picture surrounded by four globes as being the ones on hand at the time of the assignment and in his possession as assignee after the assignment; says Dr. Richmond at one time pretended to be crazy.

10th. JOHN A. REED, being duly sworn and examined, says he is 33 years of age; resides at St. Joseph, Mo.; has known Dr.
171–26 S. A. Richmond twelve years; says Dr. Richmond testified in the suits brought at Columbus, Ohio, referred to by witness Butler and others; that he testified in said case that he had no interest in the stock of the S. A. Richmond Medical Company; that it belonged to his wife, to Mr. Drout, and his brother, James A. Rich-

mond; had several conversations with Dr. Richmond in regard to the company. He said he owned no stock in the company.

11th. Mr. DROUT, recalled, shows by the books of the S. A. Richmond Nervine Co. (the appellant) sold H. P. Hubbard $5,558.37 worth of the Samaritan nervine, being sixteen and one-third gross.

12th. C. P. KINGSBURY resides in St. Joseph, Mo.; is a printer and binder; has known Dr. S. A. Richmond since 1873 or '74; knows of the organization of the S. A. Richmond Medical Co. Witness printed the portrait of Dr. Richmond and his portrait surrounded by the four globes. They were printed before the assignment of said company. Witness identifies the bills rendered for the work; the same bills spoken of by witness Drout and West. ("Exhibit T," but as there is no dispute about the said bills they are not inserted in the printed record.)

171–27 (Here insert substance of the deed of Eva and Dr. Richmond to Reed; also copy of sale from Tyler, assignee, to James A. Richmond; also substance of deed of Reese Shannon and wife to Richmond; also substance of deed of Eva and Dr. Richmond of certain real estate to Honeycutt.)

13th. JOHN CHRIST has known Dr. S. A. Richmond; was employed by the Richmond Medical Co.; helped put up the medicines; remembers the change in bottles, wrappers, &c.; heard Dr. Richmond speak about the change before it was made. The new style of bottles and wrappers were all used before the assignment by the S. A. Richmond Medical Co.; was with said company at the time of the assignment; said that some of the bottles, caddies, wrappers, &c., were taken by Dr. Richmond to Chicago; witness went with Dr. Richmond to Chicago and helped him there. Witness says that he knows that two sacks of the circulars announcing the proposed change in bottle and wrappers, which was to take place May 1st, 1884, were sent out before the assignment of the company.

14th. CHARLES BOETLER, tinner, St. Joseph, Mo.; dealer in tin and hardware; 52 years of age; had known Dr. Richmond ever since he came to St. Joseph. This witness testifies to furnishing
171–28 some supplies to Dr. S. A. Richmond to furnish his hotel. Supplies were not paid for.

15th. EDWIN WEINSHANK was in the employ of the Dr. S. A. Richmond Medical Company prior to the assignment; says that he knows the eight-ounce bottles and the portraits of Dr. Richmond and his portrait surrounded by four globes were used to put up medicine before the assignment; he knows that the circulars announcing the change in the manner of putting up the medicines were sent out; that cartoons had been received before the assignment.

16th. JOHN COOMBE, printer, St. Joseph, Mo. Witness printed the pamphlet containing the minutes of the Methodist Episcopal

conference, held in the spring of 1884, for the Richmond Medical Co. This was prior to the assignment, and there was printed on the back of said minutes for the Richmond Medical Co. an advertisement showing the portrait of Dr. Richmond and his portrait surrounded by four globes or hemispheres. This printing was done for the S. A. Richmond Medical Co.

17th. W. K. JAMES is an attorney-at-law, St. Joseph, Mo.; knows Dr. Richmond; says that Dr. Richmond testified when
171–29–520 his deposition was taken in the cases at Columbus, Ohio (referred to by other witnesses), that he had no stock in the S. A. Richmond Medical Co.; that his wife and Jim and Drout owned the stock in said company; says that he knows that Dr. Richmond was sued in 1882 and was hard up; that it was decided to be useless to sue him; that nothing could be recovered. (Here insert "Exhibit A.") May 1st, 1882, meeting of the board of directors of the Dr. S. A. Richmond Medical Co., at which the by-laws were adopted and proposition of Dr. Richmond to sell to the company his whole outfit for $5,000 was submitted and accepted by the company. On March 5th, 1883, J. A. Richmond was elected president of the S. A. Richmond Medical Co. and Dr. S. A. Richmond treasurer. On October 3rd, 1883, at a meeting of the board, with Dr. Richmond in the chair, contracts were considered by the board of directors.

On May 13th, 1884, the meeting of the board of directors, at which Dr. Richmond and James A. Richmond were present, Dr. Richmond reported that the company was insolvent and introduced a resolution, which was adopted, directing the president to make an assignment to John F. Tyler for the benefit of the creditors. At a meeting of the directors held December 10, 1884, Dr. Richmond resigned as president, and Director John Christ was elected to succeed the Doctor in the office of president.

521 (Copy.)

"EXHIBIT F F."

Be it known that we, James A. Richmond, of Douglas county, Illinois; John Albus, Jr., and Michael Draut, of the city of Saint Joseph, Buchanan county, Missouri, do by these presents form a body politic and corporate, pursuant to the provisions of chapter twenty-one (21) of the Revised Statutes of the State of Missouri and the several acts of the General Assembly amendatory thereof and supplementary thereto, and for that purpose we do hereby make the following certificate of facts:

First. The corporate name of said company is hereby certified to be "Dr. S. A. Richmond Medical Company."

Second. The corporation is to be located at the city of Saint Joseph, in the county of Buchanan and State of Missouri.

Third. The amount of the capital stock of said corporation shall be five thousand dollars ($5,000), divided into fifty (50) shares of the

par value of one hundred dollars each, all of which has been *bona fide* subscribed, and the whole of which has been actually paid up in lawful money of the United States and is in the custody of the persons named as the first board of directors.

Fourth. The names and places of residences of the several stockholders and the number of shares subscribed by each are as follows, viz:

Names.	Places of residences.	Number of shares.
James A. Richmond.	Douglas county, Illinois.	48, forty-eight.
John Albus, Jr.....	St. Joseph, Missouri.....	1, one.
Michael Draut.....	St. Joseph, Missouri.....	1, one.

522 Fifth. The number of the board of directors of said company shall be three and the names of those agreed upon for the first year are as follows, viz: James A. Richmond, John Albus, Jr., and Michael Draut.

Sixth. The corporation shall continue in existence for the term of fifty years.

Seventh. The purposes for which this company is formed is to manufacture and sell a medicinal compound known as Dr. S. A. Richmond's Samaritan nervine and such other medical compounds, chemical substances, or patent medicines as said corporation may from time to time deem expedient.

In testimony whereof we have hereunto subscribed our names and affixed our seals this 26th day of April, A. D. 1882.

JAMES A. RICHMOND. [SEAL.]
JOHN ALBUS, JR. [SEAL.]
MICHAEL J. DRAUT. [SEAL.]

STATE OF MISSOURI, } ss:
County of Buchanan, }

Be it remembered that on this 26th day of April, A. D. 1882, before me, the undersigned, a notary public within and for said county, personally came James A. Richmond, John Albus, Jr., and Michael Draut, who are personally known to me to be the same persons whose names are subscribed to the foregoing instrument of writing as parties thereto, and severally acknowledged that they executed the same for the uses and purposes therein mentioned.

In testimony whereof I have hereunto subscribed my name and affixed my seal, at my office, in the city of St. Joseph, the day and year last aforesaid.

JOHN F. TYLER, [SEAL.]
Notary Public.

My commission expires January 25, A. D. 1883.

523 STATE OF MISSOURI, } ss:
County of Buchanan, }

In the recorder's office.

I, James A. Millan, recorder of deeds within and for the county aforesaid, do hereby certify that the foregoing and annexed instrument of writing was on the 26th day of April, A. D. 1882, at 4 o'clock — minutes p. m., duly filed for record in this office, and with the certificate of acknowlegement thereon endorsed is recorded in the records of this office, in Book 117, at page 591.

In witness whereof I hereunto set my hand and affix the seal of said office, at Saint Joseph, Buchanan county, Missouri, the day and year last aforesaid.

[SEAL.] JAMES A. MILLAN, *Recorder*,
By A. G. NAHM, *Deputy*.

524 (Copy.)

"EXHIBIT G G."

ST. JOSEPH, MO., *December 11th*, 1884.

The directors and incorporators *the* the Dr. S. A. Richmond Nervine Company, namely, James A. Richmond, Michael Draut, and John Christ, met this day at the office of J. W. Strong, No. 404 Francis St., St. Joseph, Mo.; and on motion, James A. Richmond was called to the chair and Michael Draut was appointed secretary.

On motion, James A. Richmond was unanimously elected president of this company and its board of directors.

On motion, Michael Draut was unanimously elected secretary of this company and its board of directors.

On motion of John Christ, the following was adopted as the seal of the company:

[SEAL.]

The following resolution was offered by John Christ and unanimously adopted:

Be it resolved, That Dr. S. A. Richmond be elected treasurer and general manager of the Dr. S. A. Richmond Nervine Company, and shall receive as a salary for his services the sum of $200.00 per month, to be paid monthly, and shall have power, together with the president of said company, to make and execute in the name of the company all necessary contracts for the carrying on the business for which the company is organized.

The following proposition was then received from James A. Richmond:

To the Dr. S. A. Richmond Nervine Company:

525 I hereby propose to sell and assign to the Dr. S. A. Richmond Nervine Company, in consideration of the sum of two thousand dollars, all my right, title, and interest in and to the

formula or receipt for the manufacture and compounding of what is known as the Dr. S. A. Richmond Samaritan nervine and nervine pills and the right to manufacture and vend the same; also the trade-mark heretofore used by the Dr. S. A. Richmond Medical Company in its business, and also all my right, title, and interest in and to all of the articles of personal property enumerated and described in the circuit court of Buchanan county, Missouri, by John F. Tyler as assignee of the Dr. S. A. Richmond Medical Company, and also all my right, title, and interest in and to the foregoing rights and personal property which I have acquired through and by an assignment made to me by A. B. Powell, assignee of one Wolverton.

JAMES A. RICHMOND.

The following whereas and resolution was offered by John Christ and unanimously adopted:

Whereas James A. Richmond has made a proposition in writing to the Dr. S. A. Richmond Nervine Company, in consideration of the sum of two thousand dollars, to transfer, sell, and assign to said company all of his right, title, and interest in and to the formula or receipt for the manufacture and compounding of what is known as the Dr. S. A. Richmond Samaritan nervine and nervine pills and the right to manufacture and vend the same; also the trade-mark heretofore used by the Dr. S. A. Richmond Medical Company in its business, and also all of his right, title, and interest in and to all of the articles of personal property enumerated and described in a certain inventory filed in the circuit court of Buchanan
526 county, Missouri, by John F. Tyler as assignee of the Dr. S. A. Richmond Medical Company, and also all of his right, title, and interest in and to the foregoing rights and personal property which he had acquired through and by an assignment made him by A. B. Powell, assignee of one C. W. Wolverton;

Therefore be it resolved, That the said offer of the said James A. Richmond be received and accepted and the treasurer of the said Dr. S. A. Richmond Nervine Company pay to the said James A. Richmond therefor the sum of two thousand dollars upon the execution of said transfer.

To the president and board of directors of the Dr. S. A. Richmond Nervine Company.

GENTLEMEN: I have the honor to report that James A. Richmond has fully complied with the proposition *he* formerly made to the Dr. S. A. Richmond Nervine Company to transfer, sell, and assign to said company the rights and personal property contained and described in his said proposition and in writing has assigned and transferred said rights and personal property, which assignment I herewith submit, and that in pursuance of a resolution of the board of directors of said company heretofore adopted upon the execution and delivery of said assignment I did pay him the sum of two thousand dollars out of the fund of said company.

Dr. S. A. RICHMOND,
General Manager & Treas.

John Christ introduced the following resolution, which was unanimously adopted:

Be it resolved, That in addition to the compensation already provided for the services to Dr. S. A. Richmond as general manager and treasurer of the Dr. S. A. Richmond Nervine Company *to* be allowed free of charge whatever amount of the medicine manufactured by said company *as* he may require to supply his patients.

527

On motion, the board adjourned subject to the call of the president.

MICHAEL DRAUT, *Sec'y.*

ST. JOSEPH, MO., *June* 23, '85.

At a call meeting this day held by the board of directors of this company the following were present: Jas. A. Richmond, president; Michael J. Draut, sec't'y, and Eva E. Richmond, the said James A. Richmond, Michael J. Draut, and Eva E. Richmond being all the stockholders of said company.

On motion, it was unanimously ordered that Eva E. Richmond be elected as a director to fill the vacancy caused by the resignation of John Christ. Dr. S. A. Richmond, being present, offered to sell to this company the copyright and the right to secure the title to such copyright under the laws of the United States for three books, to be entitled Manhood and Womanhood, Venereal Diseases, and Temperance, for the sum of five hundred dollars.

On motion, said offer was accepted and Dr. Richmond, treas. of this company, authorized and directed to credit himself on his account for the sum of five hundred dollars in payment for said copyrights.

And comes now Dr. S. A. Richmond, treas. of this company, and presents his accounts of receipts and disbursements, which *is* here spread of record: Receipts, $19,101.32; disbursements, $6,375.62; and it appearing that there is in the hands of the treasurer $5,000 which is not needed for the payment of debts, it is ordered that a divident of $250.00 per share be declared on the stock of this company and paid to the holders of said stock, and that said divident be credited to the treas. and charged to the surplus of his account.

528

On motion, Mrs. Eva E. Richmond was elected vice-president of the board of directors of this company.

On motion, board adjourned.

M. J. DRAUT, *Sec'y.*

J. A. RICHMOND, *Pres't.*

ST. JOSEPH, MO., *Nov.* 20, '85.

At a meeting this day held of the board of directors of the Dr. S. A. Richmond Nervine Company, at its office, in St. Joseph, Mo.—present, Jas. A. Richmond, president, and M. J. Draut and Eva E. Richmond, directors—on motion, it was ordered that Dr. S. A. Richmond, general manager of said company, be, and he is hereby, authorized to make and execute all contracts for the conducting of the

business of said company alone and without the consent of the president of said company.

M. J. DRAUT, *Sec'y.*

J. A. RICHMOND, *Pres't.*

529 ST. JOSEPH, MO., *Feb. 5th*, 1886.

A meeting of the directors of the Dr. S. A. Richmond Nervine Co. held as above.

Present: All the directors.

The following resolutions were read and unanimously adopted:

Whereas it has become necessary to provide funds for the carrying on of the business of this company and to discharge its existing obligations; and

Whereas this company has no immediate resources from which to derive such funds; and

Whereas C. P. Kingsbury and James A. Richmond have expressed a willingness to endorse the note of this company and have the same discounted to the amount of twelve hundred and three dollars, provided this company execute to the said Kingsbury and said Richmond a chattel mortgage or deed of trust on the effects of this company, including the good will of the business, the trade-mark, and all other property, to save them harmless from any loss by reason of such endorsement: Now, therefore, be it

Resolved by the board of directors of the Dr. S. A. Richmond Nervine Company, That Michael J. Draut be authorized, and is hereby directed, in the name and as the act of this company to execute and deliver to C. P. Kingsbury and James A. Richmond, to them or either of them or to any other person or persons who shall endorse or become security for this company on its note or otherwise, a chattel mortgage or deed of trust, with power of sale and such other conditions as may be proper or necessary or demanded by the person so endorsing or becoming security on all the property of this company, including its business, the good will thereof, together with all trade-marks owned or used by this company, formulas, and all other property now owned or hereafter acquired by this company, to
530 indemnify and hold harmless the persons so endorsing and so becoming security.

On motion, unanimously adopted, Mrs. Eva E. Richmond was, and is hereby, authorized to draw all checks and drafts in the name of this corporation which may be necessary in carrying on the business of this company or in paying or discharging any obligations of this company.

On motion, the meeting adjourned, subject to the call of the secretary.

J. A. RICHMOND, *Pres.*

MICHAEL J. DRAUT, *Sec'y.*

ST. JOSEPH, MO., *Nov. 26th*, '87.

A special meeting of the board of directors of the Dr. S. A. Richmond Nervine Co. was held this day at the company's office.

Present: Eva E. Richmond, vice-pres't, and M. J. Draut, sec'y of the company.

Absent: James A. Richmond.

On motion of Eva E. Richmond, the annexed cut, &c., was adopted as a trade-mark of the Dr. S. A. Richmond Nervine Co.s, and Mr. Draut, secretary of the company, was, and is hereby, instructed and authorized to apply and sign papers, &c., for having the above trade-mark duly recorded or patented.

The trade-mark consists of a vignette of Dr. S. A. Richmond with the words "trade mark" printed in small capitals, the former on the right and the latter on the left.

There being no further business, the meeting adjourned.

M. J. DRAUT, *Sec'y.*

——— ———, *Vice-pres't.*

ST. JOSEPH, MO.

531 Special meeting of the company held this 3rd day of March, 1888, at its office.

Present: Jas. A. Richmond, Eva E. Richmond, and M. J. Draut.

Eva E. Richmond, treasurer of the company, presented her report of the financial standing of the corporation. There being a surplus of $24,879.14 on hand, arising from the business of the company from June 23rd, 1885, to M'ch, 1888, James A. Richmond moved, and it was unanimously passed, that a dividend of $1,243.95 per share be declared, and the treasurer was instructed to pay the same on demand at the office of the company.

On motion, the meeting adjourned.

M. J. DRAUT, *Sec'y.*

J. A. RICHMOND, *Pres't.*

ST. JOSEPH, MO., *Nov. 24th*, 1888.

At the call of the president a special meeting of the board of directors of the Dr. S. A. Richmond Nervine Co. was held at the company's office, all the directors being present.

The treasurer, Eva E. Richmond, presented her report of the financial standing of the company. There being a surplus of $8,535.35 on hand, arising from the business of the corporation from March 1st, '88, to Nov. 24th, '88, James A. Richmond moved that a dividend of four (4) hundred dollars per share be declared, which was unanimously passed, and the treasurer was instructed to pay the same on demand at the office of the company.

532 There being no further business, the meeting adjourned.

M. J. DRAUT, *Sec'y.*

J. A. RICHMOND, *President.*

ST. JOSEPH, MO., *Jan. 6th*, 1889.

At the call of James A. Richmond, president of the Dr. S. A. Richmond Nervine Company, a special meeting of the directors of the Dr. S. A. Richmond Nervine Co. was held at their office. Minutes of previous meetings were read and approved. At the request of president, Eva E. Richmond, treasurer of the company, submitted

a report of the financial standing of the company, and, there appearing to be a surplus of $2,472.09, a dividend of $103.60 per share was declared, and the treasurer is hereby instructed to pay said dividend to proper shareholders, the remaining $400.00 being unpaid dividend one share declared at meeting of Nov. 24, '88.

There being no further business, the meeting adjourned.

M. J. DRAUT, *Sec'y.*

J. A. RICHMOND, *Pres.*

In pursuance of published notice a meeting of the stockholders of the Dr. S. A. Richmond Nervine Co. was held this 2nd day of May, 1889, at their office, in St. Joseph, Mo.

The meeting was called to order by the president, James A. Richmond.

Present: Jas. A. Richmond, Eva E. Richmond, M. J. Draut, and Henry C. Christ, being all the shareholders of said company.

533–544 On motion, an election for directors for ensuing year was ordered, which election resulted in electing Eva E. Richmond, M. J. Draut, and H. C. Christ directors of said company.

On motion, Eva E. Richmond was unanimously elected president.

M. J. Draut, on motion of Eva E. Richmond, was unanimously elected vice-president and secretary.

On motion of H. C. Christ, Eva E. Richmond was elected treasurer of said company.

There being no further business, the meeting adjourned to meet again on Thursday, May 9th, at their office.

M. A. DRAUT, *Sec'y.*

545 (Copy.)

"EXHIBIT M M."

$10,000.00. ST. JOSEPH, MO., *June* 29, 1879.

One day after date I promise to pay Eva E. Richmond ten thousand $\frac{00}{100}$ dollars for value received, with interest, at the rate of ten per cent. per annum, from date.

SAMUEL A. RICHMOND.

No. —. If the interest is not annually paid, to become as principal and bear same rate of interest, negotiable and payable with defalcation or discount.

(Endorsements on back as follows:)

(The following *is* the credits on the within note:)

Phœnix Life Assurance Co., Hartford.

Aug. 9th, 1879	$19 50
" " 1880	19 50
" " 1881	19 50
" " 1882	19 50
" " 1883	19 50
" " 18—	

Northwestern Mutual, Milwaukee.

March 25th, 1881	124 10
" " 1882	124 10
" " 1883	124 10

Connecticut Mutual, Hartford.

Aug 27, 1879	96 04
" " 1880	92 34
" " 1881	92 34
" " 1882	92 09
" " 1883	92 09

Mutual Life, New York.

Dec. 15th, 1879	214 25
June 15th, 1880	214 25
Dec. 15th, 1880	214 20
June 15th, 1881	214 20
Dec. 15th, 1881	214 20
June 15th, 1882	214 20
Dec. 15th, 1882	214 20
June " 1883	214 20
Dec. " 1883	214 20

546 John Hancock, Boston.

Dec. 31, 1883	141 50

Manhatten Life, New York.

June 15, 1880	37 17
" 15, 1881	37 17
" " 1882	37 17
" " 1883	37 17
Dec. 22, 1883	56 34
" 24, 1883	141 75

Equitable Life, New York.

Jan. 25th, 1883	70 85
July 25, 1883	70 85
Jan. 25, 1884	70 85
Dec. 25, 1883	422 55

New York Life, N. Y.

June 14th, 1883	137 25

Washington Assurance Co.

Dec. 24th, 1883	70 43

The Travelers, Hartford.

Jan. 16th, 1883	108 92
July 16th, 1883	108 92
Jan. " 1884	103 92

Mutual Benefit.

Dec. 12th, 1883	105 51

547–580 (Copy.)

"EXHIBIT X X."

ST. JOSEPH, MO., *April 10th*, 1885.

This is to certify that Rees Shannon gave Eva E. Richmond 40 acres of land, which I sold for $1,700, including interest money. This money was all applied on life insurance for the benefit — Eva E. Richmond & children by me since 1882. I have paid my life insurance, four dividends declared on her part of the stock in the medical Co. & the nervine Co. See records for full particulars.

S. A. RICHMOND.

581 (Copy.)

"EXHIBIT Z Z."

"*Assignment.*"

Richmond M. Co.)
to
Tyler.)

Whereas, "the Dr. S. A. Richmond Medical Company of St. Joseph, Mo., a corporation organized and doing business under the laws of the State of Missouri, is in embarrassed circumstances, and is unable to meet and pay its obligations, and whereas said corporation desires to prevent the accumulation of further indebtedness and to apply all its effects and asset/s to the payments of its creditors; and whereas at a meeting of the board of directors convened for that purpose on the 13th day of May, 1884—

The following resolution and order was unanimously adopted and passed by said board of directors on a call of the ayes & nayes, and duly entered of record, viz., "Resolved, That Dr. S. A. —— president of this company be and he is hereby authorized empowered and directed to make an assignment of the property and effects of this corporation to John F. Tyler for the benefit of the creditors of this corporation, under the procisions of the Revised Statutes of Missouri of 1879—

Therefore, this indenture witnesseth, that the Dr. S. A. Richmond Medical Company of St. Joseph Mo. as party of the first part for and in consideration of the premises, and the sum of one dollar in hand to it paid by John F. Tyler of St. Joseph Missouri party of the second part, the receipt whereof is hereby acknowledged,
582 does hereby assign, bargain, sell and convey to the said John F. Tyler as assignee and in trust for the uses and purposes hereinafter stated, all and every of the deeds, chattels, effects, rights, credits, accounts, choses in action, and property of every kind and character belonging to the said "The Dr. S. A. Richmond Medical Company," including its office furniture and fixtures, advertising

materials printed matter, circulars, electrotypes, medicine bottles and material on hands for the manufacture of medicine, and all and every article of property or right belonging to said company including whatever rights, it has or may have to mix compound manufacture or sell a certain medicine known as "Samaritan nervine."

To have and to hold the same and every part thereof to the said John F. Tyler as assignee, for the benefit of all the creditors of said party of the first part, under and in compliance with the provisions of chapter 5, of the Revised Statutes of Missouri of 1879, and for the sole use and benefit of all and every of said creditors in proportion to their respective lawful claim against said corporation.

In witness whereof the said "The Dr. S. A. Richmond Medical Company of St. Joseph Missouri" has by S. A. Richmond its president hereunto set its hand and affixed its seal and executed and delivered these presents.

[SEAL.] THE DR. S. A. RICHMOND MEDICAL COMPANY,
By S. A. RICHMOND, *President.*

STATE OF MISSOURI, } ss:
Buchanan County, }

On this 13th day of May, A. D. 1884, before me appeared Dr. S. A. Richmond, to me personally known, who, being by me duly sworn, did say he is the president of the Dr. S. A. Richmond Medical Company of St. Joseph, Mo., and that the seal affixed to
583 said instrument is the corporate seal of said corporation, and that said instrument was signed and sealed in behalf of said corporation by authority of its board of directors, and said Dr. S. A. Richmond acknowledged said instrument to be the free act and deed of said corporation.

In testimony whereof I have hereunto set my hand and affixed my official seal the day and year as herein.

My term of office expires on the 11th day of April, 1886.

[SEAL.] JOHN A. READ,
Notary Public.

In the Matter of the Assignment of the DR. S. A. RICHMOND MEDICAL COMPANY.

To the circuit court of Buchanan county, Mo.:

S. A. Richmond, president and agent of the Dr. S. A. Richmond Medical Company, comes now and on his oath (he being first duly sworn) says that said company has this day made an assignment for the benefit of its creditors under the provisions of chapter 5 of the Revised Statutes of Missouri of 1879; that the estate assigned consists of the following generally:

Office and lab-ratory furniture and fixtures.
2 iron safes.
Lot wood engraving.
" electrotypes.

Medicines & materials on hand.
Printed matter & stationery.
Books and book accounts.
1 spring wagon.
Bottles, &c.
Cash, 825.

All of said property worth about $1,000 and not more.

584 The said company has, in New York, medicines in the hands of agents, but which are charged with the payment of claims of greater amounts than the value of such medicines.

S. A. RICHMOND.

Subscribed and sworn to before me this 13th day of May, 1884.

[SEAL.] JOHN A. READ,
Notary Public.

Filed for record May 13th, 1884, at 1 o'clock & 30 m. p. m.

THOMAS N. FINCH, *Recorder.*
By DANL T. LYSAGHT, *D. R.*

STATE OF MISSOURI, } ss:
County of Buchanan, }

I, Thomas N. Finch, recorder of deeds within and for the county and State aforesaid, do hereby certify that the above and foregoing instrument of writing is a true and correct copy of the record as recorded in Book 6, at page 430, of the records of Buchanan county.

In testimony whereof I have hereunto set my hand and
[SEAL.] affixed my official seal, at my office, in St. Joseph, Mo., this 19th day of July, 1884.

THOMAS N. FINCH, *Recorder.*

585 STATE OF MISSOURI, } ss:
County of Buchanan, }

I, Thomas A. Brown, presiding judge of the county court of Buchanan county, Missouri, do hereby certify that Thomas N. Finch is the recorder of said county, in said State aforesaid, and as such is the legal custodian of the records of deeds of said county, in said State aforesaid, and that the testation of said Thomas N. Finch as such recorder to the annexed copy of the deed of assignment of the Dr. S. A. Richmond Medical Company is in due form and by the proper officer as required by the laws of the State of Missouri, and that his signature thereto is genuine.

Witness my hand this 25th day of July, 1884.

THOS. A. BROWN,
Presiding Judge of the Buchanan County Court.

STATE OF MISSOURI, } ss:
County of Buchanan, }

I, Phillip Rogers, clerk of the county court of Buchanan county, Missouri, do hereby certify that Thomas A. Brown is the presiding

judge of the county court of Buchanan county, Missouri, and that he is duly commissioned and qualified, and that his signature to the foregoing certificate is genuine.

In testimony whereof I have hereunto set my hand & affixed my official seal this 25th day of July, 1884.

[SEAL.] PHIL. ROGERS,
Clerk of Buchanan Co. Court.

(Endorsed:) Original deed of assignment. Dr. S. A. Richmond Med. Co. to Joh. F. Tyler.

586–598 (Copy.)

"EXHIBIT 1."

Whereas, on the 11th day of August, A. D. 1884, in pursuance of an order of the circuit court of Buchanan county, Missouri, made in vacation, rendered in the matter of the assignment of the Dr. S. A. Richmond Medical Company, I sold to James A. Richmond, of the county of Douglas and State of Illinois, in consideration of the sum of twenty-five thousand dollars, all the right, title, interest, and claim I have as assignee in and to the formula or receipt for the manufacture and compounding of what is known as Dr. S. A. Richmond's Samaritan nervine and nervine pills and the right to manufacture and vend the same; also the trade-mark heretofore used by said medical company in its business:

And whereas I reported to the court said sale and the same has been approved and confirmed:

Therefore, in consideration of the premises and said sum of twenty-five thousand dollars, I hereby transfer, assign, and convey to the said James A. Richmond all the right and title which as said assignee I have in and to the right, title, interest in the formula or receipt for the manufacture and compounding of what is known as Dr. S. A. Richmond's Samaritan nervine and nervine pills and the right to manufacture and vend the same; also the trade-mark heretofore used by said medical company.

In testimony whereof I have hereunto set my hand and seal this the 11th day of December, A. D. 1884.

JOHN F. TYLER, *Assignee.* [SEAL.]

599 In the Circuit Court of the United States for the Southern District of Illinois.

DR. S. A. RICHMOND NERVINE CO., Plaintiff,
vs.
S. A. RICHMOND, Defendant.

STATE OF ILLINOIS, } ss.:
Southern District of Illinois, }

SENECA N. TAYLOR, a witness called on behalf of the defendant herein and residing in the city of St. Louis, Missouri, more than

one hundred miles from the place where this cause is to be tried, being duly cautioned and sworn to tell the whole truth and being carefully examined, deposes and says as follows:

Direct examination.

By W. C. WOLVERTON, counsel for defendant:

Q. I will have you state your name, age and residence, and occupation.

A. My name is Seneca N. Taylor; my residence, St. Louis, Missouri; my age, fifty-three years, and my profession is that of an attorney-at-law.

Q. How long have you been engaged in the practice of law?

A. Since the year 1861, and in the city of St. Louis since 1865.

Q. How long have you resided in the city of St. Louis?

600 A. Since the year 1865.

Q. If you are a member of any firm give the name of the firm.

A. I am a member of a firm, and its title is Taylor & Pollard.

Q. Are you acquainted with Dr. Richmond?

A. I am acquainted with Dr. S. A. Richmond.

Q. How long have you known him?

A. I became acquainted with Dr. S. A. Richmond, I think, in the month of June or else July, 1884.

Q. You may state the circumstances under which you became acquainted with him, if you know them.

A. Dr. Richmond came to my office, in this city, with Mr. Wolverton, of Bundy and Wolverton, Tuscola, Illinois, with a letter of introduction from George W. Parker, general manager of the Cairo short line, to consult me concerning legal business growing out of an assignment of Dr. S. A. Richmond Medical Company of St. Joseph.

Q. You may state what you did with reference to that legal business, if anything.

A. The first question they desired settled related to the validity of a sale made by Col. Tyler, of St. Joseph, Missouri, who, I learned, in May, 1884, had been made assignee under the State law of Missouri to the Dr. S. A. Richmond Medical Company. The sale about which they consulted me was one made by Col. Tyler as assignee to Mr. Wolverton of the goods, chattels, and trade mark of said company. The question arose whether that sale so made by Col. Tyler without its being confirmed by the court passed the title to the property. I do not know that this calls for my view. I, at least, gave it as my opinion that under the laws of Missouri a sale of

601 that kind would pass the title without the confirmation.

Q. State if you visited St. Joe with reference to the business you have just testified about.

A. I was not employed by Dr. Richmond to visit St. Joseph in regard to that matter, but was employed, as I understand, and paid by Mr. Wolverton to represent one A. B. Powell, to whom he stated he had transferred the goods and chattels he had paid for to Tyler,

and the employment was to obtain possession of the goods and chattels so purchased by Powell from Wolverton, who stated that he had purchased them at the assignee's sale. I went to St. Joseph and was there a day or two, and in connection with, I think, Mr. James M. Strong brought a suit known as claim and delivery of personal property, which of course means a replevin for said goods, and in the name of A. B. Powell, and had them shipped to Chicago, if I remember correctly, on or about the 10th or 12th of July, 1884, to Powell.

Q. State if among the goods so replevined there were any cartoons similar to those now in use by the nervine company.

A. Really, I have not yet traced what styles of cartoons are now in use by the nervine company.

Q. What knowledge have you of the styles used by the nervine company?

A. The style which was being used, as I learned at the time of the assignment——

Q. What knowledge have you now of the styles used?

A. No knowledge.

Q. Did you ever see any of their medicine?

A. Certainly. I have seen their medicine, and I knew the style being used some years ago, but I have not seen any of their

602 medicine for some years.

Q. State the style used when you saw it.

A. At the date of the assignment there was being used a trademark, if I remember correctly, with a man in a falling attitude; it seems to me his hat was falling off. It was a very striking cartoon. I cannot go into detail now; and at the time of this replevin suit, I recollect, there was one or more sample boxes of the cartoons at the place of business, and that was a little different—that had four globes and a very pronounced picture of Dr. Richmond, and his name under the picture—but those were not replevined.

Q. If any statement was made you by Dr. Richmond or any of his employees about these cartoons that you say were not replevined tell what it was.

A. On the occasion I have spoken of as visiting St. Joseph to institute this replevin suit I was at the place of business of the Dr. S. A. Richmond Medical Company, and it was there I saw these latter cartoons with the four globes and the picture of Dr. Richmond, and, if I remember correctly, also some bottles with, I think, a picture of Dr. Richmond blown in. These were not replevined; and it was stated to me by Dr. Richmond and his principal clerk that these were not included in the assignment; that they had been obtained since and belonged to Dr. Richmond, and the cartoons with the four globes and Dr. Richmond's picture and the bottles with Dr. Richmond's picture blown in were by him caused to be shipped with the goods replevined in the claim of Powell to Chicago with the goods that were replevined.

Q. State who this principal clerk was, if you know.

603 A. My recollection is it was Michael Draut, and, if I remember correctly, he went on to Chicago.

Q. State fully all Michael Draut said about these goods or the ownership of them.

A. He did but very little talking about the matter.

By Mr. PARRISH:

Q. Were you not attorney for the stockholders then?

A. I had never——

By Mr. PARRISH:

Q. Answer my question.

A. No; I was not.

Q. Were you attorney for Mrs. Richmond or Draut or James Richmond?

A. No.

Q. Were you their attorney afterwards in connection with this business?

A. I was employed subsequently by Dr. S. A. Richmond. All that was paid me was paid by Dr. S. A. Richmond, but at this time I was solely in the employ of Mr. Powell. I was going to say before Mr. Parrish asked the question that the talking was done almost wholly by Mr. Richmond, though Draut was there and pointed out the cartoons and bottles which Dr. Richmond claimed were his, and he (Draut) assented to it.

Q. If he said anything at all or did anything indicating as to who the ownership was, please state what he said or did.

A. The general statement was made that all the goods and chattels which were assigned by the medical company to Col. Tyler were by Col. Tyler sold to Mr. Wolverton and by Mr. Wolverton to Mr. Powell, and, of course, the question I was interested in was to get Mr. Powell's goods, and those goods were pointed out as not

604 belonging to that lot.

Q. Pointed out by whom?

A. By both the doctor and Mr. Draut. Of course I was only interested in the Powell matter because I was employed with reference to that. There was no antagonism. When I speak of these as being pointed out as not belonging to Mr. Tyler I have reference to the cartoons having the four globes, the doctor's picture, and the bottles with the doctor's picture blown in.

Q. State, if you please, whether you ever had any employment from Dr. Richmond with reference to matters growing out of the medical company; and, if so, tell about when the first employment occurred.

A. In the early part of July, 1884, Dr. Richmond came to my office in this city and said to me that H. B. Hubbard, an advertising agent of the East with whom the medical company had a contract for doing its advertising, had brought a suit in the city of New York by attachment and had garnisheed considerable sums of money due by one Crittenden, a dealer in proprietary medicines. This suit of Hubbard's was brought against the Dr. S. A. Richmond Medical Company, and I learn that it had been brought subsequent to the assignment made by that company to Col. Tyler; that as-

signment was made early in May. If I mistake not, this attachment was brought some few days later. I was employed by Dr. Richmond to go to New York and investigate the condition of those suits and to take steps to prevent judgment going by default and to make arrangements for the defence of those attachment suits, predicated on the legal theory that the assignment under our
605 State law necessarily carried with it to Col. Tyler the credit due the company from Crittenden and others in New York. That was the nature of my employment.

Q. State what you did under that employment.

A. I went to the city of New York and on my arrival I went to the court in which the suit was brought to ascertain who the attorneys were who brought the suit. I found it was brought by a gentleman named Payson Merrill. I also called on Mr. Crittenden, who had a contract with the Dr. S. A. Richmond Medical Company for the handling of its proprietary medicines in New York, and gathered from Mr. Crittenden something about the condition of the account between him and the medical company; of course, I do not remember the details of it, but I believe there was considerable due by him to the company. I also learned that he had been garnisheed at this attachment suit, and I learned also by Payson Merrill that he had been advised of the assignment by the medical company to Col. Tyler at St. Joseph. I discussed with him the legal effect of that assignment and contended with him that the assignment was efficacious in carrying this credit, and that Tyler would interplead and take steps to claim the funds that had been garnisheed, and I obtained abstracts of those proceedings as far as they had gone, and ordered transcripts of the records so far as made, and then returned home and reported to Dr. Richmond.

Q. State whether you had any correspondence with the doctor.

A. I think I did not write to the doctor while in New York, but immediately on my return home I wrote to him.

Q. Have you a letter-press copy of the correspondence?

A. I have here a copy of that letter which I wrote to the doctor.

Q. What book is that?

606 A. A letter book of Taylor & Pollard's which we began using April 19th, 1884, and ceased to use September 4th, 1885. The letter sent to Dr. Richmond reporting what had been done is found on pages 154 and 155 and bears date July 19th, 1884.

Q. Read the letter.

A. (Witness reading:) "July 19, '4." In this connection I desire to say that in our letter-heads the 18 and 8 is in print and does not copy. The letter after the date reads:

"Dr. S. A. Richmond.

DEAR SIR: I arrived home this morning. No telegram reached me from you while in New York, else I would have waited for you. I am possessed of all needful facts so that application to set aside the defaults can be prepared here and forwarded to counsel at New York. Action should be taken at once in this matter. I shall write to the assignee today to employ Nat. Meyer, of 18 Broadway, to interplead

as to the goods assigned. Just as soon as you conveniently can come to St. Louis, do so. I am inclined to think it the purpose of Hubbard to visit St. Louis August 12th to prove up his claim. I have paid for and will have at my office by tomorrow a true copy of all the pleadings, &c., in the Hubbard attachment case in New York. I have before me an abstract from them.

Payson Merrill, of 99 Broadway, New York, is the local attorney for Hubbard. He says it may be that Hubbard's St. Joe attorneys may consent to the dismissal of the attachment suit in New York, and that Hubbard may rely solely on proving up his claim before the assignee.

I shall write today to St. Joseph suggesting that proper action be taken at once to attain the consent of Hubbard's attorneys to dismiss New York action.

—— ——."

Yours truly,

607 The name to this letter does not appear on the copy book because the clerk in copying put it too low down, but it is in my handwriting and the signature was undoubtedly attached.

Q. State whether you mailed the letter, a copy of which you have just read, to Dr. Richmond on or about that date.

A. Of course I have no recollection about a detail of that kind, but in the usual course of business in the office it was undoubtedly mailed.

Q. State what was the result of that attachment proceeding you have testified about.

A. The result was that the attachments were dismissed, and on the 12th of August Hubbard, through Raney & Brown, of St. Joseph, exhibited his claim before Col. Tyler as assignee. It was tried, however, that day, but postponed for some days after until the latter part of August for hearing.

Q. By whom were you employed on these attachment proceedings in New York?

A. By Dr. S. A. Richmond.

Q. And who, if any one, paid you?

A. I was paid by Dr. S. A. Richmond for the services.

Q. How much, if anything?

A. I was paid. He gave me a draft at the time of employment for four hundred and five dollars, I think it was. I estimated it would take a week's time to do what was desired, and the four hundred and five dollars was what it was estimated would be sufficient to cover my services at $50 per day and expenses.

Q. State whether that charge was reasonable.

A. I regarded it so. It was my uniform charge when I go off. I cannot say that hardly, though. It is the general charge

608 I have made. That is the general charge.

Q. State, if you please, what other business, if any, you transacted for Dr. Richmond or at his request in connection with the nervine company or matters growing out of the nervine company.

A. After my return from New York on the 19th of July, 1884, I soon thereafter left the city for my summer vacation.

Q. Where did you go?

A. Mt. Clemens, Michigan.

Q. If any correspondence with Dr. Richmond was had while you were there, state what it was.

A. While there I had correspondence both by letter and telegram from Dr. Richmond.

Q. State the nature of that correspondence.

A. The circuit court at St. Joseph ordered a resale by the assignee of the assets of the Dr. S. A. Richmond Medical Company. I am not positive as to the date when this order was made, but the correspondence and telegrams between Dr. Richmond and myself, if I remember correctly, while I was at St. Joe related to these matters in regard to a resale which was to be made by Col. Tyler of the assets of the Dr. S. A. Richmond Medical Company, and, second, in regard to the trial before the assignee of the claim exhibited by Mr. Hubbard and another claim exhibited by Mr. Judson, of St. Joseph.

Q. State if you ever had any other communications with him.

A. Shall I say anything about that correspondence?

Q. No; state if you ever had any other correspondence with him prior to the time you did any other business for him.

A. After my return to the city from Mt. Clemens Dr. Richmond came to my office to employ me as assistant counsel before
609 Col. Tyler, assignee, in the defense of the claim exhibited by Hubbard and Judson.

Q. State how long that trial continued—that is, the trial of the claim of Hubbard against the company which was tried before the assignee.

A. The trial of the Hubbard claim and the Judson claim combined, I think, took two solid weeks' time; not all for Hubbard. The bulk of the time was spent on the Hubbard claim, but part of the time was on Judson's claim.

Q. State if you know the amount claimed by Hubbard.

A. I cannot speak with absolute accuracy as to the amount claimed by Hubbard, but my present recollection is that it was a little in excess of fifty thousand dollars.

Q. State how that litigation resulted—the litigation in reference to the Hubbard claim.

A. That litigation resulted in the assignee's allowing Hubbard somewhere in the neighborhood of ten thousand dollars. The exact amount I could not now state; it was about that.

Q. What was the amount of the Judson claim?

A. Mr. Judson's claim was very little in excess of two thousand dollars; my recollection is, about twenty-three hundred dollars.

Q. State if you know how that litigation resulted.

A. After the trial before the assignee and before any decision was rendered by the assignee with the consent and acquiescence of Dr. Richmond that claim was compromised, and, if I remember correctly, one thousand dollars was paid to Mr. Judson; was by and

with the consent of all parties paid out of the funds in the
610 hands of the assignee, and at the same time that that was paid to Mr. Judson there was one share of stock in the Dr. S. A. Richmond Medical Company which he held to qualify as a director was also surrendered up. I speak definitely about that because it was myself who negotiated the settlement with Mr. Judson and with the acquiescence of Dr. Richmond.

Q. Now, is any one else had any share of stock at that time, tell who it was.

A. There was one share of stock held by Mr. Michael Draut.

Q. If you gave Dr. Richmond any instruction about writing to Mr. Draut about that share, tell what was said, as near as you remember.

A. Of course, it would be impossible for me to tell the exact words I said to Dr. Richmond. I was with him all the time I was there at his house, and of course we discusses generally in regard to such matters, but the substance of it was it would be well to get that stock in, so there would be no conflicting interest in regard to the stock, and so that at any time it was desirable the corporation could be wound up. I therefore told him that Draut, who was then in Chicago—that he had better write Mr. Draut and had better enclose to him one hundred dollars and ask Mr. Draut to forward to him the share of stock signed in blank.

Q. State whether he, the doctor, felt solicitous as to whether there might be any possibility that Michael Draut would not sign?

A. I do not remember that he expressed any solicitation about his signing. He stated that Draut put nothing in the corporation; that he just gave it to him to qualify him as a director.

611 Q. That was in reference to this particular share of stock that that statement was made?

A. Of course the conversation related only to this stock. He said simply the corporation was organized on the basis of the old business which he, the doctor, had carried on individually. It was that old business that was turned over as capital stock.

Q. How long did you assist in the defense of those claims?

A. I assisted in the defense of those claims, if I remember correctly, just two weeks, and my books would show that. Now, I think I arrived there on Monday, Mr. Wolverton, and I think really the trial did not begin until Tuesday morning, but of course we were arranging evidence, &c., and then after the cases were tried and the evidence closed and the assignee had the matter under advisement—a few days after that I was called upon to go to St. Joe in order to see Judge Grubb, judge of the circuit court, and to obtain from Judge Grubb some order connected with the purchase made in the name of James A. Richmond, brother of the doctor, touching the assets that had been purchased. I don't remember whether it related to the extension of the time for the payment or what, but I do know I went and spent three days and we had to go to—some other county. I went with Mr. Green, a lawyer, and James A. Strong, another lawyer, who was——

Q. James A. or James W. Strong?

A. James W., the one now dead. That is one sense related to these trials.

Q. State what your services were worth, reasonably, for the two weeks you spent in assisting in the defense of the claims of Hubbard and Judson.

612 A. They were worth fifty dollars a day. That is what I charge—not always, but almost uniformly; sometimes more.

Q. State who, if any one, paid them.

A. They were paid by Dr. Richmond.

Q. And you were employed to make this defense at his request?

A. Yes, sir.

Q. Now, state, Mr. Taylor, where you stopped during the time you were making this defense against these two claims.

A. I stopped at the house of Dr. Richmond.

Q. Now, you may tell whether or not his business matters were talked over fully at the house in the presence of himself and yourself and Mrs. Richmond.

A. The business matters were talked over very freely at his house in the preparation of evidence. Mrs. Richmond was by only part of the time at the table. Of course, we discussed matters, but in the preparation of evidence Mrs. Richmond had her household duties, and often was not present.

Q. State what information you have which you obtained while you were assisting at the trial in the defense of these two claims as to who held the stock in the Dr. S. A. Richmond Medical Company, and for whose use, if any one's, it was held.

A. The bulk of all of the stock, if I remember correctly, was held in the name of Mrs. S. A. Richmond, wife of the doctor. Of course the doctor always spoke of it at all times as his business, and that he had conveyed it to Mrs. Richmond or had it transferred to Mrs. Richmond and had organized the corporation so as to keep the creditors growing out of the World's hotel (I think he called it) from breaking up his business.

Q. Who did he say was the absolute owner of the stock?

613 A. He always claimed at all times that he was the absolute owner.

Q. Did you ever hear Mrs. Richmond say anything about it, as to whether she was holding the stock or how she held it? If so, tell what she said.

A. During the time of the trial, while I was there, I never heard Mrs. Richmond discuss that matter. It was discussed at the table, and I never heard her say anything about it. The doctor always spoke about why he had organized the corporation and why he had transferred the stock in the name of Mrs. Richmond.

Q. State if these conversations were had in the presence of Mrs. Richmond.

A. Oh, yes; frequently—that is, about his business. He always spoke about it as his business, and the great burden of his complaint was that his business had been hurt so and so, so and so.

Q. Did you ever at any time have any conversation with Mrs. Richmond as to how she held this stock?

A. When I was up to try to get the doctor discharged from the insane asylum, in 1888, she told me then that she held the stock and held it as her stock, but that was after, of course.

Q. I mean any time prior to the existence of the organization of the new nervine company.

A. No. As I have before said, it was always talked at the house that it was his company and his business and his stock, based on his turning his business over, and that he had turned it over to Mrs. Richmond to hold for him because of the fact that his creditors would break up the business.

Q. If in any conversation you had with him at the table in the presence of Mrs. Richmond he made any statement as to the
614 ownership of this stock, tell what he said.

A. He always said at the table—and his brother Jim was there also—that it was his business and he was going to do so and so, and, of course, the rest always acquiesced in what he said and what he was going to do about the business, but there never was any direct words said by Mrs. Richmond, but it was simply said that it was his business, and everything seemed perfectly harmonious.

Q. State who was present usually at the table.

A. Mr. James Richmond was there throughout the trial and myself and the doctor's children and Mrs. Richmond, and on a few occasions Mr. Strong took dinner there during the trial and on one occasion, for a day or two, two young ladies. I think one was a niece, cousin of Mrs. Richmond, and another lady. I don't remember any others—yes, there was another lady part of the time, but I don't remember her name.

Q. State, if you know, by whom the capital stock for the organization of the Dr. S. A. Richmond Medical Company was furnished or as to whether any of it was ever furnished anybody or not.

A. Well, if you mean by that money put in the corporation, of course it was distinctly stated no money was put in, but the business which Dr. S. A. Richmond had formerly carried on in his own name was turned over to the Dr. S. A. Richmond Medical Company when formed, and it was the good will of that business which constitutes the capital of the concern.

Q. State whether Dr. Richmond ever received any consideration for it.

A. All I know is what was said. Of course, I did not organize the corporation. He always claimed he turned his business
615 over and for the purpose I have stated, that he was heavily in debt, growing out of building or furnishing a great hotel to be known as the World's hotel, and it was in order to save the business and keep it going that he organized his business into this corporation, and he said that it was his. That was talked very freely by the doctor, and he was a man who repeated himself very frequently, so it was often mentioned about his business and the effect of the assignment upon his business.

Q. At this last conversation you speak of having had with Mrs. Richmond some time ago, in which she claimed the stock was hers,

did she state anything else in that conversation as to how she came by it?

A. We did not go into details about that. Of course my principal business on that occasion, in March, 1888, I see by my books was to try to get an order from the superintendent of the Insane Asylum of St. Joseph for the formal discharge of Dr. Richmond. Mrs. Richmond kindly took me out to the asylum and I also discussed the matter in regard to the property, but the burden of my talk related to the discharge of Dr. Richmond from the insane asylum. She said this, however, that she had children to take care of, and that the stock was now in her name, and that about one-third of it was in the name of James A. Richmond, and that which was in her name she intended to hold, because she needed it for the support of the family. She didn't discuss with me at that time how she came by it.

Q. Did she say anything as to how she held it?

A. No; there was no discussion as to how she held it at that time.

Q. At any other time did you ever have any talk with her about how she held the stock?

616 A. During the time I was there, while the trial of the Hubbard and Judson claims was progressing, as I have before stated, when we were preparing the evidence, Mrs. Richmond was not by; we generally did that in the parlor with James and what other witnesses had voice in the arrangement of things. Mrs. Richmond was always by at meal times and when sitting and talking socially, and the doctor was always talking about his great business and how he was going to push things and how he caused it to be put in his wife's name to be held for him and how the shares Judson and Draut held he desired put over into her name, and the end in view was to dissolve the old corporation. He also consulted me as to whether it could be dissolved by proceedings instituted on the part of——

Q. There conversations were had in the presence of Mrs. Richmond?

A. Yes; many of them were; and there was no assertion at any of these conversations in regard to the stock in that old company but what it was held for him. He asserted always it was organized for the purpose of enabling him to keep the business together.

Q. Did she remain silent when these assertions were made; did she ever deny any statement made?

A. No; she never denied any statement, but of course acquiesced in the statement in regard to the property matters at that time.

Q. Do you know what became of the share of stock in the medical company that stood in the name of Draut?

A. That share of stock while I was still at St. Joe was sent by mail from Chicago to Dr. Richmond, if I remember correctly.

Q. About what time was that?

A. It was along during the first part, I should say, of the

617 month of September, 1884.

Q. State whether that was the time you were making the defence.

A. Yes, sir; that was the time.

Q. What was done with the share of stock?

A. It was sent from Chicago to Dr. S. A. Richmond.

Q. To whom, if any one, was it assigned?

A. I think, under my advice, it was assigned to Mrs. Richmond, and Judson's was, I know.

Q. Why was this share of stock and the Judson share of stock or either of them assigned to Mrs. Richmond?

A. Mrs. Richmond had in her name considerable of the stock of the corporation at that time, and it was the purpose at that time to get in all of the stock so it would be held, in a manner, so the doctor could control it. Then our idea was to effect a settlement as speedily as possible with Hubbard, and if I had not been interfered with that would have been done, and the idea was if that was gotten in and the amount of Hubbard's claim determined and all the stock controlled by parties for the interest of the doctor it would relieve Jim from putting up all his money; but if the stock was outstanding that interest it would necessitate the full amount of the money being paid in. It was not all paid in to Tyler. Part, at least, was secured by a deed of trust on Jim's farm. The object was to get it in shape so if there was enough to satisfy the assignee, and that was about the only claim that was adjudicated, the Judson claim having been settled before. Then, if there was enough money to satisfy the Hubbard claim and expenses, the balance might remain without being collected. The second proposition was that at any

618 time they could they would surrender and have the old corporation wiped out, so they could entirely be rid of that and the contract which was outstanding between Hubbard, the advertising agent, and the Dr. S. A. Richmond Medical Company. The reason for the desire of being rid of that was that Hubbard had manifestly proven himself absolutely false as an advertising agent; had presented bills never due; had charged prices greatly in excess of that which he had paid—all that was developed in the trial of his claim against Dr. S. A. Richmond—so that while he presented a claim somewhere about fifty thousand dollars he recovered only about ten thousand dollars. The bills as he presented them purported to be for advertising done up to the time of the assignment, and the question arose whether the mere assignment would relieve the old corporation for the unexpired term. It was thought it would not; at least that it might lead to litigation, and so it would really necessitate Jim's raising the entire amount, and by so doing nothing at all would be left under the old corporation, and that the organization of the new corporation would then allow them to start out free of Hubbard's claim. That is, in brief, what I now recollect.

Q. That was the object of the new corporation?

A. Yes, sir; for the organization of the new corporation. But I had nothing to do with the organization of the new corporation; was not present, and did not know anything about it. I advised, however, the organization of the new corporation.

Q. That was the last service, then, you rendered to Dr. Richmond about matters growing out of that?

A. No; during the time of this trial Dr. Richmond was carrying on the nervine business at Chicago. I think Michael Draut
619 was there running the business for him. At that time the doctor discussed the matter about the propriety of moving his family to Chicago and continuing the business there, and I know it was finally concluded while I was at his house that he would not do so, but come back to St. Joe and remove the business from Chicago and run it at St. Joe. Now, I do not recollect the date when this second company was formed. I was not there, but I know I was called upon to draw contracts, and, if I remember correctly, between the Samaritan Nervine Company and a certain firm in Chicago, and to prepare like contracts to be signed by some eastern parties.

Q. You mean the Dr. S. A. Richmond Medical Company instead of the Samaritan Company?

A. Yes; I mean the Dr. S. A. Richmond Medical Company.

Q. What date was that corporation formed?

A. About the 10th of December, 1884.

Q. Of 1884?

A. Yes; I rendered services for the doctor in the month of January, 1885, also; and that was the last service that I rendered for him until this matter came up in 1888.

Q. Were you at St. Joseph, at any time after the organization of the new company, prior to January 1st, 1886?

A. My impression is that those services I rendered in January, 1885, were at St. Joseph. Indeed, I know they must have been, because the expense is charged with it. I had a pass on the Wabash, and it is only a small expense, and probably it related to a sleeper, but I do not now recall the nature of the business that took me there in January, 1885.

Q. What were the total amount of fees paid you by Dr.
620 Richmond for business transacted for him by you which grew out of the assignment of the medical company?

A. $1,577.00. This includes my expenses to New York, which I suppose were about one hundred dollars, and less than fifty dollars for other expenses. There were paid to me over fourteen hundred dollars for actual services; for services and expenses, all told, there was paid to me, in connection with those matters, $1,577.10. Now, all of the services that I rendered the doctor and for which I was paid the sums named grew out of said assignment, unless in being two days at Chicago——

Q. Give the date, please.

A. And a day's service here with reference to drawing the contracts, and that was, of course, germain to these.

Q. Please state whether, when you visited St. Joseph the first time to institute the replevin suit, you were at the office or store of Dr. Richmond, and whether you saw a sample box of cartoons and bottles which had been shipped to Dr. S. A. Richmond personally from Philadelphia; and, if so, state if you heard or had any con-

versation between Dr. Richmond and Mrs. Richmond touching said cartoons and bottles.

A. On the first trip to St. Joseph?

Q. Yes.

A. That will have to be answered in sections. I saw such cartoons and bottles—cartoons shipped from Philadelphia or from somewhere else, I don't remember where—the character of which I have already explained, to wit, cartoons with four globes, Dr. Richmond's picture, and his signature under his picture, and
621 bottles with Dr. Richmond's picture blown in the sides of them; but I had no conversation with Mrs. Richmond on my first visit to St. Joseph at all, and my present recollection is that on that visit I was at the doctor's house. I was there on business for Mr. Powell, and my recollection is that I stopped at the large hotel downtown, and I have no recollection of seeing Mrs. Richmond then. The first I met Mrs. Richmond at all was when I went up there to defend in the Hubbard claim.

Q. Did you have any conversation with her at any subsequent time about those cartoons and bottles?

A. No, not directly; nothing more than as I saw—was talking generally at the house about how the doctor was going to run this and that; the cartoons he had gotten out, and when and why he had gotten them up. The general trend was he had gotten up these cartoons after the assignment to Tyler, and that the bottles were gotten up after the assignment to Tyler, and his idea was to start out with this kind of cartoon and bottle and then, if he should happen not to get the old trade-mark, he could run on under these and hold his way.

Q. With reference to these cartoons and bottles being gotten up after the assignment, were not some of them on hand?

A. I have already answered that.

By Mr. PARRISH: I object to the form of that question; they could not have been gotten up afterwards.

A. This assignment was made about the 13th of May, 1884, and these cartoons and bottles were gotten up, as I understood it, after the assignment and were Dr. Richmond's property; that was the impression I got.

622. Q. You are not certain about that?

A. I simply know that they were there and the matter was talked over. The thing I was interested in was to get the Powell property; Mr. Richmond desired to take these cartoons, etc., and send them to Chicago.

Q. State whether you saw Dr. Richmond at any subsequent time after the organization of the new company, say about the month of December, 1886—that is, a short time before he was missing.

A. A short time before the doctor was missing at St. Joe—was it 1886?—he was here at the office. I do not remember when he was missing; I cannot come within several months without some one prompting me as to when he was missing, but he was here a short time before missing on his was back from Illinois, and the reason

I say a short time before he was missing is, I associated his conduct—his behavior—with his being missed.

Q. What was his conduct and appearance here at that time?

A. He seemed in a very high nervous state, and he was in my private office and would get up and walk the floor and complain of his head and complain about Col. Strong and Col. Tyler, and went on to tell me about meetings that somebody had held up at St. Joe, and he believed if it had not been for those meetings he would have committed suicide or something else, and complained bitterly of Col. Tyler and Col. Strong, as I said. I tried to appease him and quiet him, but he seemed entirely to have lost his mental balance, so much so I called Mr. Pollard's attention to it; of course Pollard did not have much conversation with him, but I said to Mr. Pollard, "He was beside himself and I would not be sur-
623 prised at his doing anything; he was a fit subject for the insane asylum."

Q. If you had any conversation with Mrs. Richmond in regard to the condition she found him in at Chicago afterward, tell what she said.

A. She said he was in a demented condition, in a terrible condition, all run down, and seemed to be almost unconscious of anything; did not seem even to recognize the youngest child, who was his pet, or seemed to be when I was there, and for a good while she saw he was in a condition after he came home of apparent imbecility.

Q. If you know anything about who owned the shares of stock of the new company, the Dr. S. A. Richmond Nervine Company, tell.

A. I never discussed that with the doctor until after his insanity, unless it was when I was there in St. Joe in 1885. As I say, I do not recollect the nature of that business. My impression is I was called there by telegram by the doctor, and exactly what I was called there for I cannot state. These other things made an impression on my mind. As I reflect now, I am inclined to think he wanted me to take hold of a criminal proceeding against Hubbard, and as I refused to have anything to do with criminal proceedings, stating I was not a criminal lawyer, I never did anything about it. At one time I was asked to assist in such proceedings.

Cross-examination.

By Mr. PARRISH:

Q. If I understand you, the first employment you had in which Dr. Richmond acted was with reference to the property bought by Mr. Powell?

624 A. Of Mr. Wolverton, yes. Mr. Wolverton bought it at the assignee's sale, and he transferred it to Mr. A. B. Powell. Indeed, there was a bill of sale from Mr. Wolverton, the bill showing which——

Q. Just answer these questions. The assignment you have reference to, was it the assignment of the Dr. Richmond Medical Company to John F. Tyler, as assignee?

A. It was.

Q. Do you remember when that assignment was made?

A. I was not present when it was made, but it was made, I learned.

Q. If you do not know just say so.

A. Well, I know by the papers it was made in May, 1884. I was not present when it was made.

Q. Do you know what property was included in that assignment, or did you know?

A. I saw the inventory by the assignee, if I remember correctly.

Q. Did Mr. Richmond ever tell you, or Mrs. Richmond or any of the stockholders, what property was included in that assignment?

A. Dr. Richmond told me some things that were not included.

Q. I am asking you what was included.

A. My answer is responsive. He told me certain things were assigned, to wit, this property I replevined. Other things, he said, were not assigned. The cartoons with the four globes and pictures and the trade-mark would not be included, as he understood it.

Q. Do you know, of your own knowledge or from anything that Dr. Richmond ever told you, what was included in that assignment?

625 A. If you mean by that question do I know everything and can I tell everything I saw, no. I know certain things were. There were fixtures and tools and some goods, as I understand, and the trade-mark of the man falling in an epileptic fit, that was included; that, of course, I know.

Q. There may have been other things included you do not remember, might there not?

A. There may have been other little things included that I do not remember, but that was the bulk of the things as he represented it; but I know those. I know he claimed——

Q. I am only asking—I insist that you only answer the questions. When you went to New York, was it at the solicitation of Dr. Richmond or the Dr. Richmond Medical Company?

A. I was employed specifically by Dr. Richmond. The medical company had made an assignment to Col. Tyler, and the only other employment I could have had would have been by Col. Tyler. I did not look to him for pay, but was paid for services by Dr. S. A. Richmond.

Q. State if Dr. S. A. Richmond claimed to be the owner of the goods attached there at that time.

A. Dr. Richmond did not claim to be the owner of the goods attached there at that time individually. He claimed, however, that the goods attached there belonged to the Dr. S. A. Richmond Medical Company, and he owned what there was in the company vested and what there was more than enough to pay the debts, and therefore that he had a direct interest in the defence.

Q. State if he did not and you did not claim that that property attached in the East in quality belonged to the medical company, and that you did not advise that the assignee take steps to

626 assert his rights.

A. Most certainly I claimed that.

Q. Mr. Taylor, when did you go to St. Joe to assist in the matters of controversy testified of before the assignee in the assignment of the medical company to Col. Tyler?

A. The very last days of August, 1884, I think, or else the first days of September, 1884.

Q. State if you remained at his house during the time you were there.

A. Constantly at his house during the time I was there at these trials.

Q. Were your plans and methods of proceedings talked of there at his house and matured at his house?

A. They were.

Q. So far as the matters of business you were interested in with him — were transacted by you and him at his house?

A. At his house in the main—that is to say, sometimes we had consultations with James A. Strong at his office, but the bulk of the conversations was at the house of Dr. S. A. Richmond, during the hours when not engaged in the trial.

Q. Mrs. Richmond did not take any part in those deliberations?

A. Mrs. Richmond said but very little, as I have stated. In regard to the plans and what we would do she paid but very little attention—that is, said nothing, but listened, of course.

Q. The principal time she was present when you were at the house was during meal times?

A. More frequently then than elsewhere, though on some occasions we would sit in the sitting-room and talk, and on more
627 than one occasion she sat in the parlor with James and her husband and myself, but usually she was not present then.

Q. She presided at the table at meal times?

A. Always, I think, while I was there.

Q. Is it not true, Mr. Taylor, that Mrs. Richmond, when the doctor would be talking, would not say anything at all; neither deny nor admit nor dispute anything said?

A. I never heard her dispute anything he said, and usually she did not talk or affirm, but I have heard her affirm things, but usually she did not.

Q. State *if* any of the time you were present if you ever heard Dr. Richmond ask her advice about anything.

A. No; I do not think that is true. I recollect very distinctly that feelings ran pretty high about the claim of H. B. Hubbard, and I recollect in the presence of the doctor and Jim that the matter was discussed, and I recollect once I advised that the thing for the interest of all concerned was that I should be permitted to try and compromise that claim, and I recollect Jim said Hubbard ought not have anything, and the doctor said he ought not have anything, and Mrs. Richmond chimed in and said he was a scoundrel and had acted badly and had almost ruined the business, and she would think he ought not have anything at all. I remembered that particularly, because I thought it ought to be done, and Mr. Strong turned the scale and it was not done.

Q. That was the feeling that was manifest by all of them?

A. Yes, sir; by the doctor, James, and Mrs. Richmond.

Q. Who is James?

A. He is the brother of the doctor.

628 Q. And the purchaser of the assets of the medical company at the last assignee's sale?

A. He was the purchaser at the last assignee's sale.

Q. Were you up there in 1888 at any time?

A. I was there in the month of March, 1888, and again later in the season of 1888.

Q. What did you go there for?

A. In the month of March, 1888, I went to procure, if possible, a formal order of discharge of Dr. S. A. Richmond from the insane asylum at St. Joe.

Q. And did you visit Mrs. Richmond on that occasion?

A. Yes, sir; and stopped at her house.

Q. You went there for the purpose of getting Mrs. Richmond to aid you in getting Dr. Richmond's release?

A. That was in the main why I went there—to secure her assistance to that end.

Q. How often were you there at her house during your stay at St. Joe?

A. I remained at the house while there. My recollection is that James A. Richmond, the brother of the doctor, and his mother was there also. I may possibly be mistaken. It may have been the second time.

Q. How long were you there on that occasion?

A. Two or three days; two days, at least.

Q. You may state if Mrs. Richmond did not indicate her fears that if the doctor was released he would interfere with her business relations and property.

A. Yes, sir. Mrs. Richmond said at that time that she feared that if the doctor got out he would want to claim and run the

629 business, and she also said she was afraid if he got out and back to St. Joe, where the old scenes were, he might get off his base and do violence, and she did not want to be responsible.

Q. And told you she would not ask and tried to prevent his discharge?

A. Yes, sir. I tried to persuade Mrs. Richmond that it was wrong that this should stand over his head; that it was a misuse of the law, when the man was, as I believed, perfectly sane; but she declined to do anything and said she was so advised by her attorneys.

Q. I will get you to state if you did not tell Mrs. Richmond, in the presence of Vinyard, you had investigated the property and the doctor had no right to it.

A. I do not remember stating anything of that kind.

Q. You do not remember of stating it to her nor of stating it to her in the presence of Mr. Vinyard?

A. I said this: that if she had concluded not to live with him—and she said she never would live with the doctor again—if she

filed suit for divorce, she could then keep the doctor away; and if the property was hers the doctor could not interfere with it at all. I did not profess to know anything about the title. I said if the doctor conveyed the property for the purpose of hindering and delaying his creditors he could not get it back. I probably stated that to Mrs. Richmond.

Q. When was the time you were there?

A. Probably in March, or it may have been the last time.

Q. To effect the release of Dr. Richmond?

A. Yes, sir.

630 Q. How often did you talk with Mrs. Richmond in regard to the matter of his confinement?

A. I talked with Mrs. Richmond while there almost constantly, I guess, because that was what I was there for, and did everything I could to try and persuade her to do it. I said to Mrs. Richmond there that there was no way on earth that she could prevent Dr. S. A. Richmond from using his name and those cartoons in connection with the making of the nervine medicine.

Q. You stated that?

A. I did.

Q. Why do you remember stating that, when you do not remember stating other things?

A. It is yet to be shown that I do not remember other things I stated; that is a presumption on your part. I do remember stating this in regard to the business matters; that, the way the matter stood, there was not any question in my mind but what the doctor could start an independent business, using his own name, and no law on earth could prevent it, and the best way was to adjust things and not fritter it away and squander it in litigation.

Q. You remember stating that to Mrs. Richmond?

A. Yes, sir.

Q. Did you advise her at that time to get a divorce from Dr. Richmond?

A. I said, If you have concluded you will never live with the doctor again—I tried to persuade her to live with him—then, I said, let him be discharged, and to protect yourself you can get

631 a divorce and do as you please, and he cannot come to the house.

Q. State if you did not tell Mrs. Richmond it was not safe for her to live with Dr. Richmond, and that she ought to get a divorce.

A. I do not remember saying that, because I cannot say whether it was safe; if I said that, it was on account of what Mrs. Richmond told me, and I may have said if he does so and so it would not be safe.

Q. Did you say that?

A. My recollection is that I did not say it would be unsafe for her to live with him.

Q. Did you tell her she ought to get a divorce and you would assist her?

A. I never said that, that I would assist her; she told me she

had employed your firm; I never intimated in any way, shape, or form that I would assist her.

Q. Did Mrs. Richmond tell you while you were at her house in the interest of Dr. Richmond trying to get him out of the asylum that she had employed our firm to get a divorce?

A. He was not in the asylum when I was there; the thing I was trying to do was to get a formal discharge for him, this, and the order of commitment hanging over him, but Mrs. Richmond did tell me that your firm was her counsel and she had consulted you in regard to getting a divorce.

Q. You think that was the time you were there in March?

A. That or the second visit I made there.

Q. How often were you at St. Joe in the interest of Dr. Richmond trying to get him released from the asylum?

632 A. I was not there at all trying to get him released from the asylum: I was there twice trying to get the superintendent or the trustees to pass an order of formal discharge; he was not confined; he had left the asylum and was in Illinois.

Q. Do you know B. R. Vineyard, in St. Joe, an attorney?

A. Yes, sir.

Q. Did you have any conversation with him at the time you were there or either of the times you were there mentioned by you?

A. Yes; he was the attorney of Dr. Richmond at St. Joe, and I called at Dr. Richmond's request on Mr. Vineyard at one or the other of those visits; my impression is it was the last time.

Q. State if you talked over the property matters and Mrs. Richmond's rights in the nervine company with him.

A. My best impression is not. My visit at Mr. Vineyard's office was brief. My impression is, the thing I discussed with Mr. Vineyard principally was in regard to how we should get Dr. Richmond discharged, and incidentally how Mrs. Richmond could protect herself, if that discharge was granted, from his coming and attempting to live in the same home with her. Those were the things Mr. Vineyard and myself discussed, and also we examined the authorities in regard to the matter of a writ of *habeas corpus*, and he gave me the authorities, and while there at his office Mrs. Richmond left and went to consult you and Mr. Houston as to whether or not she might consent to his formal discharge, and came back and stated to me that you *pre*-emptorily objected to her consenting to his having that formal discharge from the asylum, and for that reason she had to follow your advice.

633 Q. Did Mrs. Richmond tell you we per-emptorily refused to permit her to give her consent or that we advised her to not have anything to do with it?

A. Not to have anything to do with it and advised her not to do it. The thing I was asking her was to give her consent. I had seen a number of the trustees and all asked whether she would give her consent, and I regarded that as the most important step and thought she had finally, it seemed, about made up her mind to do it.

Q. How many times did you talk to her about getting the doctor out?

A. As I said, I was there in March, 1888, and there again later in the year 1888; on the first occasion Mrs. Richmond went with me out to the asylum and I did the talking with the superintendent and she said nothing at all, and the superintendent wanted to know of me whether she would sign a request and I told him she had declined, and he gave me to understand that if the doctor stayed away a whole year from the time he left the asylum and remained in the meantime perfectly sane, as he seemed to be in March, then there would be no difficulty in getting the discharge. I waited the year and then went again, being employed to do so, and then these other obstacles came up and the formal discharge was not granted, and it was after that I advised him to go back and surrender himself and be there at the time the trustees should meet in January, 1889, and then if they insisted in keeping a sane man confined we would appeal to the supreme court of the State for a writ of *habeas corpus*.

Q. You have always professed great friendship for Mrs. Richmond?

634 A. I have.

Q. Did you write her that letter?

(Letter produced and handed witness, who, examining it, answers:)

A. Yes; I wrote Mrs. Richmond that letter, and when I wrote it I meant every word of it.

The letter identified by witness is hereto attached and marked Exhibit "A," and the envelope in which the same was enclosed is attached and marked Exhibit "B."

Q. State if you wrote Mrs. Richmond that letter (handing witness another letter).

A. Yes, I wrote Mrs. Richmond that letter.

The letter identified by witness is hereto attached and marked Exhibit "C," and the envelope inclosing same is marked Exhibit "D."

Q. Did you write that letter to Mrs. Richmond (handing witness another paper)?

A. I did.

The letter referred to by witness is hereto attached and marked Exhibit "E," and the envelope inclosing same is marked "F."

By the WITNESS: The last letter was written to her after asking Mr. Pollard questions about the gentleman referred to in the letter.

Q. Did you write this letter (handing another letter to witness)?

A. Yes.

Letter referred to is hereto attached and marked Exhibit "G," and the envelope inclosing it is marked "H."

Q. How long was it after you wrote that last letter referred to before you visited Mrs. Richmond in March?

635 A. It was before I wrote that last letter, I think, that I visited Mrs. Richmond in March, and incidentally the matter was talked of as to where I was going and she desired me to let her know the result, and I did.

Q. Was that letter written to her before the last time you visited St. Joe in the interest of Dr. Richmond?

A. That was written before the last time, because the last visit was in the fall of 1888.

Q. Do you remember the time Mrs. Richmond and myself and Col. Wolverton met here in consultation about this matter?

A. Yes, sir.

Q. State if you wrote a letter to Mrs. Richmond just prior to that time.

A. I think so.

Q. Do you remember writing her to bring the children, or two of them, and come down?

A. Probably I did.

Q. What is your best recollection about it?

A. My recollection is I did ask her to bring two of them down and visit my house; that is my recollection.

I desire to state that though I wrote that letter to Mrs. Richmond and though I wrote these letters, yet in all of my statements to Mrs. Richmond I never made any that is not exactly in keeping with the truth, and I have not the least feeling today against Mrs. Richmond, and in any manner where the truth would benefit her I would be very glad to speak it; that is the only feeling I ever had or now have toward her.

Q. Were you not the attorney of Mrs. Richmond and the doctor and all the stockholders of that medical company?

636 A. The employment was wholly by Dr. S. A. Richmond; the money was all paid by him—all that we received in the litigation, as I see by my books.

Redirect examination.

By Mr. WOLVERTON:

Q. You say you examined some authorities with Mr. Vineyard?

A. We examined some authorities touching *habeas corpus*, if I remember correctly.

Q. Did you alone or you and he together examine any authorities with reference to Mrs. Richmond's property rights?

A. None whatever.

Q. In reference to the way the property—did you talk about what the courts of Missouri had held in cases where a party had conveyed his property to delay creditors?

A. I do not think Mr. Vineyard and myself discussed that at all; the principal thing we discussed was in regard to this *habeas corpus*.

Q. In the trial of these Hubbard and Judson claims you assisted in all those?

A. Yes, sir.

Q. You were there every time anything was done and took part in the trial the same as the other attorneys engaged in the trial?

A. Yes, sir; all the testimony-in-chief for the defence I classified and arranged and put in myself. Col. Strong, if I remember, cross-examined the plaintiff's witnesses; Col. Woodson sat with us; we three constituted the counsel for the defence.

637–639 Q. What were your fees that were paid at that time for that work?

A. That is, for that immediate trial?

Q. Yes.

A. Six hundred dollars and expenses for that immediate trial, which lasted two weeks—that is to say, I do not think the trial began the first day I got there, but we were arranging matters and proceedings, and there may have been half a day's adjournment; but we were constantly arranging matters.

Q. The four hundred dollars was for what—the six hundred dollars on that trial and the four hundred dollars paid to you?

A. After the case was submitted to Col. Tyler—I mean the case of Hubbard—a few days after that I went to St. Joseph to assist in getting an order extending the time, as I remember, for the payment by James Richmond of part of the consideration which he had agreed to pay on the second sale. My recollection is he had given a deed of trust on his farm and was troubled to raise the money to meet it at the day it ought to be paid. We went and it consumed three days. I was paid one hundred and fifty dollars for the services; and then there were certain contracts drawn that I mentioned and consultations here at the office, one trip to Chicago, and then the trip to St. Joseph in January, 1885. As I have already stated, that was with reference to a criminal proceedings against Hubbard.

Q. These extra services, then, were paid for at the rate of fifty dollars a day?

A. All except the last trip to St. Joseph which I speak of, in 1885. Two days were charged there and only seventy dollars paid for those two days.

By Mr. WOLVERTON: That is all.

SENECA N. TAYLOR.

640 EXHIBIT "A." George M. Block, Special Com.

Taylor & Pollard, attorneys & counsellors at law, Locust & Broadway, Singer building, rooms 21 & 22.

SAINT LOUIS, *July 28th*, 1886.

Mrs. Dr. S. A. Richmond.

DEAR MADAM: I am filled with sorrow at the affliction which has befall*en* you. Be assured you have my warmest sympathy in your hour of bereavement and sorrow, and earnestly trust that our Heavenly Father may uphold and strengthen you to endure this great trial.

Your dear husband called upon me when in St. Louis a few weeks since and seemed deeply depressed over the condition in which his affairs were. He spoke of loss of sleep and the effect upon his mind and expressed fear that it would drive him to the insane asylum. I am confident that he is dead, and that he had lost his mind when he wrote the letters which have been published.

I regret now that when the trial closed that I did not insist positively that the Hubbard case should be compromised before the decision was rendered by the assignee. It could have been settled at that time for about ten to twelve thousand dollars and your husband could then have gone on with his business successfully. The case would have been settled, in my opinion, but for the persistent determination of Col. Strong to keep it in court.

Please write me, and if I can do anything for you command me at any time.

Yours very truly, SENECA N. TAYLOR.

641

Taylor & Pollard,
Attorneys & counsellors at law,
Saint Louis.

Missent. Stamp.

Mrs. Dr. S. A. Richmond,
St. Joseph,
[*Mich.*]*

Try Mo.
Exhibit "B," George M. Block, special com.

*[Word in brackets erased in copy.]

Exhibit "C." George M. Block, Special Com.

Taylor & Pollard, attorneys & counsellors at law, Locust & Broadway, Singer building, rooms 21 & 22.

Saint Louis, *July* 21, 1886.

Mrs. Eva E. Richmond.

Dear Madam: Your letter of the 19th inst. is before me. You did right in employing other counsel, and have not put me to any trouble whatever. I am sorry my letter was so long delayed in reaching you, not so much on my account as that you were kept in suspense.

I sincerely hope the matter will turn out all right and that speedily. Keep up good courage and these dark clouds will pass away, and God in his providence may make you stronger on account of this great sorrow.

Mrs. Taylor joins me in kind regards.

Yours truly, S. N. TAYLOR.

642

Taylor & Pollard,
Attorneys & counsellors at law,
Saint Louis.

Stamp.

Mrs. Eva E. Richmond,
St. Joseph,
Mo.

Exhibit "D," George M. Block, special com.

Exhibit "E." George M. Block, Special Com.

Taylor & Pollard, attorneys & counsellors at law, Locust & Broadway, Singer building, rooms 21 & 22.

Saint Louis, *Mar.* 19, 1888.

Dear Mrs. Richmond: I arrived home Sunday morning and found all well; have had a long talk with Mr. Pollard, and he says the Col. Mussen of St. Joe is an honest man and entirely a different person from the Col. R. H. Mussen who recently lived in St. Louis; Pollard knows them both well. So it seems the mistake I made has been fully and harmoniously explained.

Yours very truly,

S. N. TAYLOR.

Taylor & Pollard,
Attorneys & counsellors at law,
Saint Louis.

Stamp.

Mrs. S. A. Richmond,
St. Joseph,
Mo.

Exhibit "F," George M. Block, special com.

643 Exhibit "G." George M. Block, Special Com.

The Sieber's hotel, corner Third and Ohio streets.

Sedalia, Mo., *Mar. 24th*, 1888.

Mrs. S. A. Richmond.

Dear Madam: We have finished the election for delegates to the general conference, and I am elected by two-thirds majority the first ballot, with six candidates in the field. This is gratifying, and if spared I will spend the month of May in New York at the session of said conference.

I write you this knowing that you will wonder whether I am elected, and that you will be pleased to know that I am.

Kindly remember me to Miss Brown and your family.

Yours truly,

S. N. TAYLOR.

Personal. Stamp.

Mrs. S. A. Richmond,
St. Joseph,
Mo.

Exhibit "H," George M. Block, special com.

643–30 *Epitome No. 2.*

Complainant's evidence-in-chief closed.

Thereupon the following witnesses were called by the defendant, and, being duly sworn, testified in substance as follows:

643–31 1. W. C. Stevenson resides in Philadelphia; is manager of the Novelty Paper Box Company; is acquainted with Dr. Richmond; met him the first time on March 10th, 1884, at the office of the company of witness, 12th and Noble streets, Philadelphia. Dr. Richmond brought with him some electrotypes for printing and left an order for fifty thousand. The order was given in Dr. Richmond's own name. Witness knew no other party in the transaction; shipped seventeen or eighteen hundred on the order to St. Joseph, Mo.; was directed to hold the balance, the Dr. notifying witness that he intended to go to Chicago. Witness says that subsequently the engraving was changed and the "World's Medical Association" inserted; says that the first shipment of these caddies or cartoons was May 2nd, 1884; says there was on the front part of the cartoon a good portrait of Dr. Richmond, and on the back of the cartoon or caddy a picture of four globes or hemispheres enclosing Dr. Richmond's portrait; that they did not ship any of said goods until the 2nd of May, 1884; that it required about three weeks to deliver said goods in St. Joseph or Kansas City by the usual route of shipping it.

643–32 Next witness, Wm. C. Lilly, sworn and examined, says: Is forty-three years of age; residence, Pittsburg, and a member of the firm of Wm. McCully & Co., glass manufacturers; has known Samuel A. Richmond eight years; he was a customer of ours, and frequently called at our place of business. On or about March 8th, 1884, Dr. Richmond gave an order, a copy of which is produced by witness, marked "Exhibit C C" in the original record. The order book, which witness produces, shows an order from Dr. Richmond, St. Joseph, Mo., for two car-loads of nine and one-half ounce bottles, O. M. (this is an abbreviation for "own mold"), green, same style as Pierce's Favorite; bottle to weigh fourteen ounces, and the neck to be lengthened one-half inch, at $1 per gross, cash; pack in one-gross boxes without straw; six molds for above; to be charged for 100 gross two-ounce oval pomades, flint, $1.92; to be lettered as directed; to be forwarded by the 20th of April, and draw on bill of lading. Witness says goods were to be shipped to Dr. S. A. Richmond, St. Joseph, Mo.; says about April 30th we made

a shipment on the order to Dr. Richmond by rail; they were consigned to Wm. McCully & Co., with sight draft attached to the bill of lading, and the railroad company was to notify Dr.
643–33 Richmond of the arrival of the goods and upon payment of the draft deliver the goods. Another shipment of a car-load was made May 8th in the same way. Sight draft for second car-load was not paid, but returned, and on the 19th of May we telegraphed Dr. Richmond, who replied that he had made an assignment and asked us to hold the bottles and store them. The bottles were stored in St. Joseph and remained there until the 22nd of July following, when, by Dr. Richmond's direction, we forwarded them to the World's Medical Association, 559 State street, Chicago. We sent draft for $1,396.52 to cover bill, expenditure, &c. It was paid and the goods were delivered to the World's Medical Association. Our firm dealt with Dr. Richmond.

A vignette of Dr. Richmond was blown in the bottles; do not know who made the mold for the bottles. Our letter book shows, however, that Charles Yockel & Co., of Philadelphia, made said molds. The order said that said molds were to be lettered on one edge "Samaritan" and on the other edge "nervine;" the front panel to have the head of Dr. Richmond in the center and the lettering below and above something in this style (witness indicating): S. A. Richmond, M. D., in curve below, and the word "head" below that, and in straight lines the words "St. Joseph, Missouri."
643–34 Also therewith two flint-glass Glory Hole molds. On one side were the letters "S. A. R., M. D.;" in the center the word "head;" on the other side "St. Jo., Missouri," with direction also to make as good a picture of Dr. Richmond as they could.

Witness says it would take about 10 days for shipment of April 30th to reach St. Jo. If delivery was made in ten or fifteen days, we are satisfied; knew of Dr. S. A. Richmond Company in January, 1883. At that time the company ordered a car-load of five-ounce panels, O. M.; do not know who gave the order; order was given December 20th, 1882. An order was also given May 22nd, 1883, one car load five-ounce bottles, O. M., eight-ounce weight, "Exhibit C," O. R. Five-ounce panel is one inch by one and three-fourths square, the point being to make the bottle look large and hold as little as possible.

September 22nd, 1883, the Dr. S. A. Richmond Medical Co. ordered a car-load of five-ounce bottles ("Exhibit D," O. R.). October 11th, 1883, ordered fifty gross of five-ounce bottles ("Exhibit F," O. R.). We furnished the goods so ordered. The bill of May 8th, 1884, was $1,396.52. ("Exhibit G," O. R.)

Further, there was a prior shipment to the one referred to as May 8th, 1884; it was five casts, 25½ gross, of eight-ounce
643–35 panel, O. M., 84 per gross, being $100.50, and seven boxes, 24 and ½ gross, two-ounce pill bottles, flint, $1.92—total, $148.34. The Dr. S. A. Richmond Medical Co. paid the draft of $148.34 for this order last mentioned. The goods paid for by the Dr. S. A. Richmond Medical Co. were part of the order furnished

by our company on the order of Dr. Richmond made in March, as before stated.

Witness rendered the Dr. S. A. Richmond Medical Co. a bill under date of April 26th, 1884, for five casts, 25½ gross, of eight-ounce panel, O. M., 84, being $100.50; seven boxes, 24 and 1½ —, two-ounce pill bottles, flint, $1.92, equal $147.84, and our company drew on the Dr. S. A. Richmond Medical Co., St. Joseph, Mo., for the amount, to wit, $148.34, and the draft was paid. The goods ordered by Dr. S. A. Richmond were to be forwarded by the 20th of April.

2. MARK A. MATSON, being duly sworn and examined, says: I reside in Pittsburgh; member of the firm of Wm. McCully & Co., glass-makers; know Dr. Richmond. On May 22nd, 1883, the Dr. S. A. Richmond Medical Co. ordered, by mail, one car-load to be shipped in June, sample sent, eight-ounce bottle, and stating that our Dr. Richmond will be in Pittsburg in July and call and see you. The correspondence of the Dr. S. A. Richmond Medi-
643–36 cal Company with McCully & Co. shows order for eight-ounce bottles in 1883, June, July, Sept., and October.

3. HUGO VANEHAN: 44 years of age; reside at Chicago; am a wood engraver; know Dr. Richmond; engraved portrait of Dr. Richmond in December, 1883; did the work for Dr. Richmond; no business with anybody else; the Dr. paid for it; the bill was $17. We also made the picture of four globes about the portrait of Dr. Richmond in February, 1884; the work was completed about March 1, 1884, and cost $20; also a label; all paid, $54, by Dr. S. A. Richmond.

Witness says that Dr. told him that he had given stock to his wife and brother, but it was his, the doctor's, and they held it in trust for him, as witness understood it; says the Dr. was in financial trouble. Witness says, I saw some bills made out by our company against the Dr. S. A. Richmond Medical Co. I can only account for the bills being made out that way by supposing that the book-keeper made a mistake by putting the name of the medical company instead of that of Dr. S. A. Richmond. We made no other portraits or pictures except those I have mentioned. The bills were made out according to the order book we kept. The order
643–37 book is lost. We have not been able to find it. The witness is shown and identifies the following bills of the Chicago Engraving Company against the Dr. S. A. Richmond Medical Co. under dates as follows:

February 12th, 1884, for several items, $22.75.
April 10th, two items, $11.
May 17th, Dr. S. A. Richmond, three items, $11.
May 4th, Dr. S. A. Richmond, two items, $13.
April 12th, Dr. S. A. Richmond, four items, $226.25.
April 16th, Dr. S. A. Richmond Medical Co., $33.75.
April 24th, 1884, Dr. S. A. Richmond Medical Co., $10.25.
May 1st, 1884, Dr. S. A. Richmond Medical Co., $294.25.
Witness says all this work was done for Dr. S. A. Richmond: all

the work was done under Dr. Richmond's order. Witness says he understood that the Dr. was putting his business in a company and the stock in name of his wife and brother to put it beyond the reach of his creditors.

4. JOSEPH M. MILLER, being duly sworn and examined, says: Am president of the Chicago Engraving Co.; know Dr. S. A. Richmond; did business with Dr. Richmond in November and December, 1883, and January, February, March, April, and May, 1884. The witness says his company made the portrait of Dr. Richmond and the picture of the four globes or hemispheres for Dr. Richmond; looked to nobody else, and Dr. Richmond paid for the work; cannot say whether he paid it personally or not; he often came to the office of witness and paid money. Witness says Dr. Richmond said he owned all the stock of the Dr. S. A. Richmond Medical Co. The credit for work was given solely to Dr. S. A. Richmond. Witness says he would, of course, make the charge or bill as requested by the man who ordered the work; that ordinarily the bills would be made out according to the order for the work.

643–38

Witness says further: I do not have confidence in patent-medicine companies, and hence looked to Dr. S. A. Richmond. It was immaterial for whom we did the work or from whom we got the work so we got the pay; says the trade-mark was his own—that is, Dr. Richmond's.

5. EDWIN E. PRATT sworn and examined: Have known Dr. Richmond eight or nine years; am connected with the A. N. Kellogg News Company; am president and general manager; had business with Dr. Richmond in 1882—January or February; heard from persons at St. Jo. that the Dr. owned the World's hotel and was involved, but that he paid his bills. My impression from what I heard was favorable to the Dr.; had a contract with the Dr., I think, early in 1882. He secured me by mortgage on the World's hotel and furniture. I understood from the Dr. that he owned the bulk of stock in the medical company and that some others had some. We never realized anything on our bill. Witness understood from the Dr. that the corporation was organized so the business would not be involved with his old indebtedness. It was to protect him and keep his business from being taken from him. The Dr. said he was organizing a company to handle his business and pay his creditors in full.

643–39

6. Miss MATTIE RICHMOND: Age, 31; resides four miles from St. Jo.; know Dr. Richmond; am his sister-in-law; know Eva E. Richmond, wife of Dr. S. A. Richmond; talked with her at her house and at Alex. Bragg's. Eva said the nervine company was a success. I mentioned that her father was wealthy. Eva said the Dr. made all we have out of the nervine business; that he never got a dollar from her father; said she had the property where they live in her name, but would transfer it back when the Dr. wanted it; said

the Dr. had paid for it and that the Dr. had paid for every-
643–40 thing they had: heard a conversation with Dr. Richmond, Eva, and Elick Bragg in June, 1882. Bragg asked Eva about the company and she said it was organized to protect the nervine business and to keep creditors from taking it away from the Dr.; that she, Drout, and Jim held the stock in trust for the Dr. until he recovered financially, and they was to transfer it back to him at his request. Mr. Bragg also asked her about the doctor's life insurance and she told him the Dr. had given her his note for $10,000 without consideration, but he did not owe it, but that it was a sham and Bragg told her that would not hold water; that the Dr. said Lawyer Tyler had drawn up this note for a sham; that is about the amount of it; that Eva and the Dr. came to Bragg's, who is the Dr.'s stepfather, to borrow money.

Witness is shown a note for $10,000, which is dated June 29th, 1879, and witness continued: Eva said that note was to protect the Dr.'s insurance against creditors.

7. EVA F. THOMPSON: 24 years of age; live near Tuscola; have known Dr. all my life; known Eva E. Richmond ever since she was married to the Dr.; am half-sister to the Dr.; heard the conversation at Bragg's in June, 1883. The Dr. and Eva said
643–41 that the stock of the medical company was held in trust for Dr. Richmond; that they would transfer it back when he wanted it; that it was put in their hands to prevent his creditors from taking it until he could make money and pay off his debts, then they were to transfer it back; have heard Eva say at her home in St. Jo. that she, Jim, and Drout held the stock in trust for Dr. Richmond, and that Eva said their residence was in her name; that the Dr. bought it and paid for it with his own money and put it in her name because he was in debt; it was for her and the children; she (Eva) said her father had never helped her any; had never given her anything; that the Dr. had made all they had.

Cross-examination:

The Dr. said he got in debt on account of the hotel venture. Witness identifies two letters in which she speaks disparagingly of the Dr.; one is dated in June, 1885, and one in December, 1884. Witness explained that in that she was criticising the Dr. for objecting to her keeping company with certain young gentlemen whom the Dr. did not like. Last witness says she went to visit Dr. and Mrs. Richmond, in St. Jo., on the 30th of October and left on the 6th of March.

643–42 S. T. A. RICHMOND: Am a sister-in-law of Dr. S. A. Richmond; was present at Mr. Bragg's when Dr. and Mrs. Richmond were there in June; heard Eva say that the S. A. Richmond Medical Company was organized, and that Jim and Drout and Eva held the stock for the Dr.; says she can hardly recall what they did say.

Cross-examination:

The meeting was at Bragg's, June 20, 1882; she said that the Dr. and Eva both said that Mr. Shannon, Eva's father, had not helped them any.

9. EVERETT P. THOMPSON: Age, 23; Tuscola; have known Dr. Richmond for years; never met Eva but once; then witness was at her house about two years ago. Witness asked Eva if the Dr. did not make what they had in St. Jo., and Eva said he did.

Cross-examined:

Witness — there at Eva's one day; it was in December, 1887; did not hear the Dr. was insolvent; just asked the question and Eva stated that what they had in St. Jo. the Dr. had made.

10. GEORGE HAINES: Age, 35 years; clerk, in Camargo, just north of Tuscola; have known Dr. Richmond all my life; only met Mrs. Richmond occasionally at Mr. Bragg's; heard Mr. Bragg ask Eva all about the organization of the medical com-
643–43 pany, and she said it was organized to save it from the Dr.'s creditors; that the $10,000 note the Dr. had given her was without consideration; do not remember what she said about the shares of stock; Mr. Bragg offered to let Dr. Richmond have all the money he wanted if Mr. Shannon would go on the note, and Eva said she did not think he would go on the note. Witness said that Eva said that they had paid Shannon back all they had borrowed from him.

Cross-examined:

Am cousin of Dr. Richmond.

11. A. W. BRAGG: Resides at Camargo; am 33 years of age; am Dr. Richmond's half brother. This witness also stated that Mrs. Eva E. Richmond stated that the company was organized to save the business for the Dr.; that she and Jim and Drout held the stock issued to them in trust for the Dr. and would transfer it to him whenever requested to do so.

Cross-examined:

She said that the company was organized just to keep off the creditors until Dr. Richmond could pay them off; then Jim and Eva and Drout were to transfer the stock, &c., back to the Dr.

12. JOHN A. FIELD: Tuscola, Ill.; 33 years of age; druggist; bought nervine from Dr. Richmond in July and August,
643–44 1884, to be sold for the Dr. on commission. The cartoons had portraits of Dr. Richmond on. Witness identifies the cartoons and caddies which were called new style. (These are the same pictures, portraits, cartoons, and caddies referred to, about the identity of which there is no dispute.)

13. J. J. CLEMENTS: Age 63; am acquainted with Dr. Richmond and know Eva, his wife, slightly; have known the Dr. 28 or 29 years. Witness said his understanding was that Richmond and Shannon built a house in Princeton, Mo.; also a barn on the same lot, all worth from eight to twelve hundred dollars; also thinks the Dr. had some personal property worth three or four hundred dollars. This was before the Dr.'s marriage. Witness lived near the Richmonds and the Braggs in Illinois; is a horse dealer; knows nothing of Dr. Richmond owning lots except what the Dr. had told witness.

14. A. N. BRAGG: Farmer; says Dr. Richmond loaned his father $5,000 in 1881, which his father returned the next spring—that is, in April or May.

Cross-examined:

Got the money in the fall of 1881; paid it back in the spring of 1882.

643–45 15. JAMES A. RICHMOND sworn and examined. (His testimony begins on page 373, O. R.)

James A. Richmond; farmer; reside at Villa Grove, Illinois; am 45 years old and brother of Dr. S. A. Richmond. Dr. sold his interest in the home place in 1871 for $2,000 or $2,500; says that witness, Albus, and Drout met and agreed to organize the Dr. S. A. Richmond Medical Co. for the Dr.'s benefit; says that they paid nothing for the shares of stock that were issued; says he got forty-eight and Albus and Drout got one each; says the company bought the formula, trade-mark, and good will of the business, &c., for $5,000. They got the whole outfit; says the sale by Dr. Richmond to the company was a mere form; that the company was to hold it all in trust for the benefit of Dr. Richmond; that forty-seven shares were transferred to the Dr.'s wife, Eva, and that she agreed to hold the stock for the Dr.; says they declared dividends on the stock, but it was merely a matter of form. The resolution passed in that behalf was a mere matter of form; says that Drout and Eva both told him they never received any dividend. Dr. Richmond said to witness that if he got a settlement with Dr. Hubbard he would lease us those trade-marks—that is, the globes around his
643–46 picture, his portrait, &c. Witness says the company agreed to take said trade-marks if Dr. effected a settlement with Hubbard and would go and notify the public of the change from the old-style wrapper, trade-mark, &c., to the new style, which was to take effect on the 1st of May, 1884. Dr. Richmond sent out a circular announcing this; said circular was sent out by him on his own hook; that none of the new bottles or cartoons were used up to the time of the assignment, and that the good will of the business was not assigned; that the deed of assignment will show what was assigned. Witness says the property and assets were sold to Wolverton, and was finally bought by him, the witness, at Dr.

Richmond's request and for the Dr.'s benefit; that whatever he did in that behalf he did for the Dr. and at his request and for his sole benefit. He says the transfer of the trade-mark, formula, and assets and effects purchased by him to the nervine company (the appellant) was a mere form and was done at the request of the Dr. and for his benefit. Witness said that when the Dr. was insane (which was in 1886) Eva (Mrs. Richmond) telegraphed for witness to come to St. Joseph, and that while there witness asked her what had become of the stock in the S. A. Richmond Medical Company.
643–47 She said she had it in her trunk and was "holding it in trust for Doc., as she always had done before." Albert Bragg was present when this conversation took place.

Witness says in the winter of 1881 and 1882, in the sitting-room at Dr. Richmond's home, in St. Joseph, he was trying to find out how much they, Dr. and Mrs. Richmond, were worth, and asked her, Eva, if they had made all they had off of the nervine business and if her father had helped them, and she said her father had never helped them any; that they had made it all out of the nervine business. Witness continued: Two or three years ago Eva said that she had paid off a note to her mother the Dr. was owing a good while; said she got the money out of the nervine business. Witness says that when the Dr. S. A. Richmond Medical Company was organized the Dr. had loaned out in this county (in the State of Illinois) $10,000; do not know what he, the Dr., had at home. The money was loaned in his wife's name. Mrs. Richmond held the home place where she resided, as she said, for Doc. (meaning Dr. S. A. Richmond). The witness says that the Dr. S. A. Richmond Medical Co. never used the portrait of Dr. Richmond and the four globes surrounding his portrait. The witness says he never had
643–48 any interest in the Chicago business nor any of the trade-marks, nor had Wolverton.

He further says that he never sold the trade-marks of the portrait of the Dr. and of the four globes surrounding the Dr.'s portrait to the nervine company, but that the Dr. leased said trade-marks to the nervine Co. (the appellant) for $200 a month. He says there was a written lease. He saw it in May or June of this year (1891) at Gilbert Bragg's among the Dr.'s papers; that the Dr. searched for it; that he searched thoroughly, but could not find it.

The witness says that Eva Richmond told him that the Dr. did not owe her anything; that she was holding the stock she had in trust for him. The witness says that he knows that the Dr. never owed Eva, his wife, $10,000. Witness says that about the 1st of December, 1883, the Dr. S. A. Richmond Medical Co. did adopt a new style of wrapper, bottles, &c., as an improvement; that they adopted eight-ounce bottles; that the medical Co. made the change, or, rather, that the Dr. made the change.

Witness says that the Dr. had the engraving of his portrait, the four globes, &c., done on his own hook after talking with Drout and witness about it. Witness says the company was insolvent because it could not pay the bill or bills presented by
643–49 Hubbard for advertising. Witness says that all Tyler, as

assignee, transferred to him in pursuance of his purchase was the formula and the right to make the medicine and the trade-mark of a man falling in a fit. Dr. Richmond, after his trouble in which he killed Col. Strong, in 1886, was acquitted in court on the ground of insanity, and was detained in the insane hospital near St. Joseph for a number of months and did not receive the final discharge until some time in 1889, but left the hospital a long time before he had received his formal discharge papers.

Witness says that while Dr. Richmond was in the asylum he notified the witness and through him the company to quit using the trade-marks, and that witness notified Drout that the Dr. has notified us to quit using his trade-mark. Witness says that after that Drout said that the Dr. had notified us to quit using the trade-mark.

Cross-examined:

Witness says that the sale by Dr. Richmond to the S. A. Richmond Medical Co. was a matter of form; that whatever was done in that behalf was a matter of form and for the Dr.'s benefit,
643–50 use, and behoof. He says that Dr. Richmond first mentioned the trade-mark of the new portrait of himself and of the four globes surrounding the picture of the Dr. in November, 1883; that the Dr. said in regard to that that if he got a compromise with the creditors he wanted to lease his trade-mark—that is, of the portrait of himself and the picture of the globes surrounding his portrait—to the company—that is, the Richmond Medical Co.—and that afterwards the Dr. went and got the engravings and sent out circulars, &c., notifying their customers and the public of the change; says the circulars were sent out in 1883; he thinks in November.

Witness says that any statement he may have made in his deposition taken at Washington in the interference case between The Dr. S. A. Richmond Nervine Co., the appellant, and Dr. S. A. Richmond which is not in accordance with his statement in this deposition or which differs therefrom is erroneous, and that so far as any statement in the deposition taken in said interference proceeding differs or contradicts his statement now being made is erroneous and he wishes to correct it, and that such statements wherein they contradict his present statement were the result of his being confused by Mr. Butterworth or not clearly apprehend-
643–51 ing the question. He also states that if in his affidavit filed in support of Dr. S. A. Richmond's cross-bill in this case there appears any statement in conflict or any contradiction of what he states now upon the witness stand in this case such statement was erroneous and due to confusion or his not being properly reported in said affidavit; that the statements he makes in his testimony now are correct; says that he don't know what was said to Wolverton about his purchasing the property and assets in the hands of the assignee, Tyler; that Wolverton was witness' counsel and employed by him to go to St. Joseph to look into and after this business; that he first went to St. Joseph in October or November, 1883; that the S. A. Richmond Medical Co. made an assignment on

the 13th of May, 1884, and afterwards Tyler sold the property assigned to him to Wolverton, who assigned the same to one Powell on the 27th of May, 1884, and witness thinks the sale by Powell to him, witness, was in July, 1884; that he made said purchase, as stated, at Dr. Richmond's request and for and on his account; that Dr. Richmond then engaged in manufacturing and selling medicines at Chicago; that he, witness, had no interest whatever with the Dr. or in the business he was conducting at Chicago;
643–52 that the Dr. continued business there for several months.

Witness identifies an agreement made between himself and the Dr., the World's Medical Association, and others that they should not sell medicine, &c., until the court removed the restriction. Witness says the sale to Wolverton was annulled or set aside by the circuit court in which the trust was administered, and that he, witness, subsequently bought the assigned property from the assignee for $25,000; that he paid on account of said purchase $2,500; that he made said purchase at the request of Samuel A. Richmond for and on his account, and that he had no personal interest therein.

He says that the Dr. S. A. Richmond Nervine Co. was organized about December 11th, 1884, by witness, Mr. Drout, and John Christ; that he, witness, on the organization of said company submitted a proposition to sell and transfer the property and interest he had purchased from the assignee, Tyler, and that his proposition was accepted; that this proposition was submitted and accepted at the request and for the benefit of Dr. Richmond; that it was all a matter of form and for the Dr.'s benefit; that the capital stock
643–53 of this last-named company was $2,000; that fourteen shares of said stock was issued to Eva E. Richmond; that it was so issued at Dr. Richmond's request; that he, witness, held four shares which were issued to him and held by him at the Dr.'s request and for the Dr.'s benefit. He states that he was not required to pay anything further on account of the purchase; that the balance due of $22,500 was paid out of the property and assets of the assigning medical company and by giving some medicine, and that thereupon he was released by the assignee from all liability on account of his note; that at the time the S. A. Richmond Nervine Co. was organized or shortly after the stock which was issued was given to the assignee, Tyler, as security for the note which the witness had executed and after the settlement the stock was transferred by the assignee, fourteen shares going, as before stated, to Eva E. Richmond.

Witness recognizes the writing of Dr. S. A. Richmond on a statement signed by Dr. S. A. Richmond April 10th, 1885, in which he states that Reese Shannon gave Eva E. Richmond one hundred and sixty acres of land, and which I (Dr. Richmond) sold for $1,700.

(James A. Richmond's deposition begins on page 793 of the original record and closes at top of page 902.)

643–54 16. SAMUEL A. RICHMOND called, sworn, and testified as follows:

Reside at Tuscola, Illinois; am forty-three years old; was worth about $3,000 in 1871; was married to Eva E. Shannon December 13, 1871; said he bought some lots in Princeton, Missouri; says the Dr. S. A. Richmond Medical Co. was organized for his benefit and to protect his creditors all alike to save the business. He says that the Dr. S. A. Richmond Medical Company never acquired any property, money, or assets; that he had arranged with his brother Jim, Mr. Drout, and Mr. Albus and his wife Eva, before the company was organized; that the transfer of the property, &c., was for his own benefit; that the stock was issued to the several parties, his wife and Drout and his brother Jim and Albus, for his, Doc.'s, benefit, and they were to hold said stock in trust for him; that the sale to the Richmond Medical Co. of the property mentioned was a mere form; that he had at the time the company was formed in bulk, say, about $140,000 worth of property, as estimated by him (and he gives items); states that he decided in the fall of 1883 to change the trade-mark and wrapper from the old style to a new style, and that he spoke to his brother Jim about it, and said

643–55 to the company he would lease his trade-marks, to wit, the portrait of himself and four globes with his portrait in the center, & so on, to the company, provided they compromised with Hubbard; but if they failed to compromise with Hubbard, then witness would proceed to use his said trade-marks on the liver pills in any event; that circulars were prepared and issued announcing what the change would be, but witness says the company would not acquire or have the right to use said trade-marks unless the compromise mentioned with Hubbard was effected. Witness says he had the engravings made in Chicago on his own account and for his own benefit and paid for the same himself. He says he subsequently went to Philadelphia after the engraving was done and ordered boxes, cartoons, caddies, &c.; that he ordered them for himself and on his own account and paid for them himself, although he may have used the company's name and signed the company's check for the amounts; that the money was in fact his. He said the company made an assignment and they failed to lease his trade-marks owing to the fraudulent claims of Hubbard not being settled or arranged; that the circulars which went out announcing the change from the old style to the new was agreed to about November, 1883; but that no lease was ever made and the company did not acquire the right to use said trade-marks. He said that he

643–56 did lease said trade-marks and his portrait with four globes, &c., to the Dr. S. A. Richmond Nervine Company about the 11th of December, 1884, and that he then became the general manager of said company, had charge and control of its business up until January, 1886, and that in 1886 he became incapacitated, owing to mental trouble, and became insane and was placed in an asylum; that in the latter part of 1887 he notified the S. A. Richmond Nervine Company to cease using his trade-marks, and that he

finally, in 1889, brought suit to compel them to cease using said trade-marks. Witness says that he arranged with his brother, James A. Richmond, to buy of the assignee for his, the Dr.'s, benefit the property and assets held by assignee, and that he, the Dr., agreed to pay James A. back whatever he expended, and that James should hold this property in trust for him, the doctor.

He says that Jim was relieved from paying the balance of the purchase price, being $22,500, at his request and on condition that Jim would hold everything he had in trust for him, the Dr. Witness says he went to the insane asylum in August, 1886, and was there fifteen months, and that Jim and Drout and the members of
643–57 the company in fraud of witness' rights had the trade-mark of the Dr.'s portrait registered at Washington; that they continued to use both trade-marks in connection with the nervine medicine which they were manufacturing and selling right along after they were notified to quit; that it was against the doctor's right. Witness stated that all of the trade-marks referred to in this litigation were used in connection with the Samaritan nervine, the medicine in controversy, and had never been used in connection with any other medicine. Witness says that Mr. Reese Shannon, the father of his wife, Eva, never gave them anything or contributed anything; says that the certificate in which he stated that Shannon and wife had conveyed to Eva certain real estate, to wit, one hundred and sixty acres of land, which he, witness, had sold, was written at the dictation of John F. Tyler, his attorney.

Cross-examined:

Witness does not remember whether he borrowed $1,500 from Mr. Shannon, Eva's father, about the 17th of December, 1881. He does not remember of borrowing $400 on March 9th, 1880, of Mr. Shannon.

Witness' attention is called to bill of sale, given by him in 1873, on a mattress and bureau purchased by him; says that in 1874 the
643–58 home where they live was purchased and was deeded to her (Eva E. Richmond) to hold exempt as a homestead, but that she held it in trust for him, witness; that that was the understanding; that any statement to the contrary was signed by him because requested by attorney.

Witness says he failed in 1881 by reason of his attempt to run the World's hotel; that that business proved a failure. Witness says that in his testimony in the interference case between the Dr. S. A. Richmond Nervine Company and himself he was confused, and that his statement "that the Dr. S. A. Richmond Medical Company owned it all," to wit, the property, assets, good will of the business, and trade-mark, was erroneous. Witness says that in everything wherein the deposition taken in said interference case is in conflict with or in contradiction of any statement he may make in giving his testimony in the present case it was erroneous; that the statements to which his attention *were* called were made when he was confused by Mr. Butterworth's question or because he failed to clearly apprehend the question propounded.

Witness says that if he stated in his deposition in the interference case that he knew when the cartoons were ordered that the medical company was insolvent the statement was due to his being
643–59 confused; says that the accounts for engraving, &c., and for the cartoons and caddies, &c., paid by the check of the company on the State savings bank, were payments by him, although the check of the company was used, as the property and assets were in fact his own.

Witness farther says that any item in the assignment to Tyler, assignee, or in the appraisement for cartoons or caddies is a mistake, and that the same is true with reference to the five casts of eight-ounce bottles; that they did not belong to the company, but to himself. He says by an arrangement with the said Dr. S. A. Richmond Nervine Co. he leased to said company the right to use his trade-marks, the portrait of himself, and his portrait surrounded by four globes or hemispheres; that said lease was in writing; that if he had said otherwise in the interference case it was due to his confusion.

Witness says that he is the sole owner of the formula and right to manufacture, use, and sell the Samaritan nervine in
643–60 controversy; that he is the sole owner of the several trade-marks, to wit, the man falling in a fit, his portrait, and his portrait surrounded by four globes or hemispheres; that no other person or company has the right to manufacture and sell the said nervine or use said trade-marks; that the various transfers and sales of said right was a mere form; that whatever was done in and about that behalf was done for him and for his sole benefit, and that this was understood by all the parties interested in the several corporations.

(Dr. S. A. Richmond's evidence begins on page 793 and ends on page 1052, O. R.)

643–61 The defendants also called the following witnesses, all of Tuscola, Illinois, to testify concerning the reputation of the said Dr. S. A. Richmond for truth and veracity:

17. N. W. CHAPMAN, retired doctor: Know Dr. Richmond: his reputation for truth and veracity is good.

18. R. W. HARRISON: Was mayor of the town; business, tailor: know Dr. Richmond; his reputation for truth and veracity is good.

19. A. W. WASHBURN, doctor and druggist: Know Dr. Richmond: his reputation for truth and veracity is good.

20. A. W. WOODY, township supervisor: Know Dr. Richmond; his reputation for truth and veracity good.

21. CORNELIUS RYE, school director: Know Dr. Richmond: reputation for truth and veracity good.

22. GEORGE D. SCOTT: Knows Dr. Richmond; reputation for truth and veracity good.

23. S. B. IRVIN: Knows Dr. Richmond; reputation for truth and veracity good.

643–62 24. JOHN J. GOFF, alderman, says that the reputation of Dr. Richmond for truth and veracity is good.

25. Dr. S. T. SPEES says that Dr. Richmond's reputation for truth and veracity is good.

26. JOHN A. FIELD, druggist, says that Dr. Richmond's reputation for truth and veracity is good.

27. PATRICK C. SLOAN, formerly clerk of the court, says Dr. Richmond's reputation for truth and veracity is good.

28. CHARLES CASHFORD says Dr. Richmond's reputation for truth and veracity is good.

29. HARVEY J. BASSETT says Dr. Richmond's reputation for truth and veracity is good.

30. THOMAS S. WYATT, justice of the peace, says Dr. Richmond's reputation for truth and veracity is good.

31. ASA MILLER, journalist, says Dr. Richmond's reputation for truth and veracity is good.

32. JOSEPH L. CONNELLY says Dr. Richmond's reputation for truth and veracity is good.

33. Dr. W. S. MARTIN says Dr. Richmond's reputation for truth and veracity is good.

643–63 34. JOHN FAIRBARN says Dr. Richmond's reputation for truth and veracity is good.

35. J. W. MCKINNEY, doctor and surgeon, says Dr. Richmond's reputation for truth and veracity is good.

36. A. SALISBURY says that Dr. Richmond's reputation for truth and veracity is good.

37. WILLIAM ILES says the same thing.

38. J. J. CLEMENTS, of Camargo township, says Dr. Richmond's reputation for truth and veracity in the neighborhood where he lives is good.

39. J. W. WATSON says that Dr. Richmond's reputation for truth and veracity is good.

40. CHARLES W. WILSON says Dr. Richmond's reputation for truth and veracity is good.

41. A. W. BRAGG, being duly sworn and examined, testified in substance: Am half brother of Dr. S. A. Richmond; was in Chicago three or four years ago and saw Dr. Richmond there; his mental condition was bad. I met Mrs. Eva E. Richmond at the Tremont house, in Chicago. When Dr. was brought in she did not recognize him, nor he her. She hugged him and says,
643–64–1352 "Is this you, Doc.?" He made no reply and she said he was an insane man.

42. DANIEL A. CONNOVER says Dr. Richmond's reputation for truth and veracity is good.

43. WESTFORT TAGGART, sheriff, says Dr. Richmond's reputation for truth and veracity is good.

44. HARRY MADISON says the Dr.'s reputation for truth and veracity is good.

45. JAMES J. DAWSON says Dr. Richmond's reputation for truth and veracity is good.

46. N. H Ewers says that Dr. Richmond's reputation for truth and veracity is good.

47. J. M. Coykendell says the Dr.'s reputation for truth and veracity is good.

1353 *Quitclaim Deed.*

This indenture, made on the fifteenth day of March, A. D. one thousand eight hundred and eighty-two, by and between Reese Shannon of the county of Buchanan and State of Missouri party of the first part and Samuel A. Richmond of the county of Buchanan and State of Missouri party of the second part,

Witnesseth, that the said party of the first part, in consideration of the sum of fifteen hundred dollars, to him paid by the said party of the second part, the receipt of which is hereby acknowledged, does by these presents, remise, release, and forever quitclaim, unto the said party of the second part, the following-described lots, tracts or parcels of land, personal property lying being and situated in the county of Buchanan and State of Missouri to wit:

On his printing presses, type and other printing material also belts, belting shafting, pulleys and gas engine, being the ones now in use by said Richmond on the grade floor of the building known as the World's hotel, situated on block thirty-one (31) of
1354 Pate's addition to the city of St. Joseph in said Buchanan county aforesaid, also all his stock of paper on hand or that may hereafter be acquired by him and placed in said building before the payment of the note hereinafter mentioned and described, also his mail wagon now in use by said Richmond and kept in the stable belonging to said Richmond near the World's hotel, also his two-seated carriage and two buggies and two horses, one a bay about twelve years old and about sixteen hands high and the other a brown mare about eight years old and about sixteen and one-half hands in height said buggies and horses being now in the possession of said Richmond and kept by him when not in use at his stable on the ground where his dwelling-house is situated at the northeast corner of Eighteen- and Francis Sts. in the city of St. Joseph, Buchanan county, Mo.

(This deed of quitclaim being made in release of, and satisfaction for, a certain deed of trust dated the 17th day of December, 1881; recorded in the recorder's office within and for the county of Buchanan aforesaid, in Deed Book 114 at page 390.)

To have and to hold the same, with all the rights, immunities, privileges and appurtenances thereto belonging, unto the said party of the second part, and his heirs and assigns, forever; so that neither the said party of the first part, nor his heirs, nor any other person or persons for him or in his name or behalf, shall or will hereafter claim or demand any right or title to the aforesaid premises, or any part thereof, but they and every of them shall, by these presents, be excluded and forever barred.

In witness whereof, the said party of the first part has hereunto set his hand and seal the day and year first above written.

REES SHANNON. [SEAL.]

1355 STATE OF MISSOURI, } ss:
County of Mercer, }

Be it remembered that on this 20th day of March, A. D. 1882, before the undersigned, a notary public within and for the county of Mercer aforesaid, personally came Reese Shannon, who is personally known to me to be the same person whose name is subscribed to the foregoing instrument of writing as a party thereto, and acknowledged the same to be his act and deed for the purposes therein mentioned.

In testimony whereof I have hereunto set my hand and affixed my official seal, at my office, in Princeton, Mo., the day and year first above written.

[SEAL.] My term of office as a notary public will expire October 15th, 1882.

J. B. EVANS,
Notary Public.

STATE OF MISSOURI, } ss:
County of Buchanan, }

In the Recorder's Office.

I, James A. Millan, recorder of said county, do hereby certify that the within instrument of writing was, at 11 o'clock and 30 minutes a. m., on the 29th day of May, A. D. 1882, duly filed for record in my office and is recorded in the records of this office in Book 109, at page 139.

[SEAL.] In witness whereof I have hereunto set my hand and affixed my official seal, at St. Joseph, this 29th day of May, A. D. 1882.

JAMES A. MILLAN, *Recorder,*
By A. G. NAHM, *Deputy Recorder.*

1356 "EXHIBIT E E."

Chattel Mortgage.

Know all men by these presents that I, Samuel A. Richmond, of Buchanan county and State of Missouri, in consideration of the sum of four hundred dollars to *him* paid by Rees Shannon, of the county of Mercer and State of Missouri, the receipt whereof is hereby acknowledged, have granted, bargained, and sold, and by these presents do grant, bargain, and sell, unto the said Rees Shannon all the following goods and chattels, wares, effects, and merchandise, to wit:

One brown mare about fifteen hands in height and about eight years old; also one phaeton buggy, both now in the possession of the said S. A. Richmond and in use by him at his home, in St. Joseph, in Missouri, Buchanan county.

To have and to hold all and singular the said goods and chattels, wares, effects, and merchandise unto the said Rees Shannon, his

executors, administrators, and assigns forever: Provided, nevertheless, that if he, the said S. A. Richmond, or his executors, administrators, or assigns or any of them shall and do well and truly pay or cause to be paid unto the said Rees Shannon, his heirs, executors, administrators, or assigns, the sum of money when *they* shall become due and payable as provided by his promissory note bearing date of March 9th to be paid as follows, to wit, twelve months after date, for the *some* of four hundred dollars, with interest from date at the rate of ten per cent. per annum, then these presents and every clause, article, or thing herein contained shall cease and be null and void; otherwise to remain in full force and effect. The parties agree that said property may remain in possession of said Richmond until condition broken, but after condition broken
1357 the said Shannon may at his pleasure take and remove the same and may enter into any building or premises of the said S. A. Richmond for that purpose.

In witness whereof I have hereunto set my hand and seal the ninth day of March, A. D. 1880.

S. A. RICHMOND. [SEAL.]

STATE OF MISSOURI, }
County of Buchanan, } *ss.:*

On this 9th day of March, A. D. 1880, before me, a notary public in and for said county, came Samuel A. Richmond, to me
[SEAL.] personally known to be the same person who executed the above instrument as grantor, and duly acknowledged the execution of the same to be his own voluntary act and deed.

In witness whereof I have hereunto subscribed my hand and affixed my notarial seal on the day and year last above written.

JOHN F. TYLER,
Notary Public.

My commission, dated January 25, 1879, expires Jan. 25th, 1883.

Quitclaim Deed.

This indenture, made on the seventh day of June, A. D. one thousand eight hundred and eighty-one, by and between Reese Shannon of the county of Mercer, and State of Missouri party of the first part, and Samuel A. Richmond of the county of Buchanan, and State of Missouri party of the second part,

1358 Witnesseth, That the said party of the first part, in consideration of the sum of four thousand and four hundred dollars, to him paid by the said party of the second part the receipt of which is hereby acknowledged, does by these presents, remise, release, and forever quitclaim unto the said party of the second part, the following-described lots, tracts, or parcels of land, lying, being and situate in the county of Buchanan and State of Missouri, to wit:

Lots one and two (1 & 2) in block nine (9) in Harris' addition to the city of St. Joseph also the following-described personal property

to wit: One brown mare about fifteen hands in height and about eight years old, also one phaeton buggy both now in the possession of the said S. A. Richmond and in use by him at his house in St. Joseph, Buchanan Co. Mo.

This deed of quitclaim being made in release of and satisfaction for a certain chattel mortgage dated March 9th 1880 recorded in the recorder's office within and for the county of Buchanan aforesaid in Chattel Mortgage Record 3 at page 325 also: (This deed of quitclaim being made in release of, and satisfaction for, a certain deed of trust dated the 12th day of December 1879; recorded in the recorder's office within and for the county of Buchanan aforesaid, in Deed Book 104 at page 79.)

To have and to hold the same, with all the rights, immunities, privileges and appurtenances, thereto belonging, unto the said party of the second part, and his heirs and assigns, forever; so that neither the said party of the first part, nor his heirs, nor any other person or persons for him or in his name or behalf, shall or will hereafter claim or demand any right or title to the aforesaid premises, or any part thereof, but they and every of them shall, by these
1359 presents be excluded and forever barred.

In witness whereof, the said party of the first part has hereto set his hand and seal the day and year first above written.

REES SHANNON. [SEAL.]
MARGARET A. SHANNON. [SEAL.]

"Exhibit F F."

STATE OF MISSOURI, } ss:
County of Mercer, }

Be it remembered that on this 9th day of June, A. D. 1887, before the undersigned, a clerk of the circuit court within and for the county of Mercer and State of Missouri, personally came Rees Shannon and wife, Margaret A. Shannon, who are personally known to me to be the same persons whose names are subscribed to the foregoing instrument of writing as parties thereto, and acknowledged the same to be their act and deed for the purposes therein mentioned; and the said Margaret A. Shannon, being by me first made acquainted with the contents of said instrument, upon an examination separate and apart from her husband acknowledged that she executed the same and relinquishes her dower in the real estate therein mentioned freely and without fear, compulsion, or undue influence of her said husband.

In testimony whereof I have hereto set my hand and
[SEAL.] affixed my official seal, at my office, in Princeton, Mo., the day and year first above written.

J. A. THOMPSON, *Clerk.*

1360 STATE OF MISSOURI, } ss:
County of Buchanan, }

Be it remembered that on this — day of June, A. D. 1881, before the undersigned, a notary public within and for the county of Mercer

aforesaid, whose commission is dated —— —, 187–, and expires —— —, 187–, personally came Rees Shannon, who is personally known to me to be the same person whose name is subscribed to the foregoing instrument of writing as a party thereto, and acknowledged the same to be his act and deed for the purpose therein mentioned.

In testimony whereof I have hereunto set my hand and [SEAL.] affixed my official seal, at my office, in ——, the day and year first above written.

—— ——.

STATE OF MISSOURI, } ss:
County of Buchanan, }

In the recorder's office.

I, J. A. Millan, recorder of said county, do hereby certify that the within instrument of writing was, on the 10th day of June, A. D. 1881, duly filed for record in this office, and is recorded in the records of this office in Book 109, at page 229.

In witness whereof I have hereunto set my hand and [SEAL.] affixed the seal of said court, at St. Joseph, this 10th day of June, A. D. 1881.

JAMES A. MILLAN, *Recorder.*

1361 Know all men by these presents that in consideration of the premises we, Eva E. Richmond and Samuel A. Richmond, her husband, being the occupiers and in possession and the said Eva E. Richmond being the owner in fee-simple of lots seven and eight, in block five, in Carter's addition to the city of Saint Joseph, in Buchanan county, in the State of Missouri, on which said grounds is a dwelling-house, do hereby claim and set apart said lots and dwelling, with its appurtenances, as and for a homestead of the said Eva E. Richmond and her said husband, to be used, occupied, and enjoyed as such by said parties to their own proper use and behoof forever in accordance with the statutes of the State of Missouri in such case made and provided.

Witness our hands and seals this — day of December, A. D. 1875.

SAMUEL RICHMOND. [SEAL.]
EVA E. RICHMOND. [SEAL.]

"Exhibit G. G."

STATE OF MISSOURI, } ss:
County of Buchanan, }

Be it remembered that Samuel A. Richmond, and Eva E. Richmond, his wife, who are personally known to the undersigned, a notary public within and for the county aforesaid, commissioned and qualified as such August 24th, 1874, till August 24th, 1878, to be the persons whose names are subscribed to the within instrument of writing as parties thereto, this day appeared before me and acknowledged that they executed the same as their voluntary act and deed for the uses and purposes therein contained; and the said

1362 Eva E. Richmond, being by me made acquainted with the contents of said deed and instrument in writing, acknowledged on an examination apart from her said husband that she executed the same freely and without compulsion or undue influence of her said husband.

Given under my hand and notarial seal this 4th day of December, A. D. 1875.

JAMES W. BOYD,
Notary Public.

STATE OF MISSOURI, } ss:
County of Buchanan, }

I, Michael Crawford, recorder of said county, do hereby certify that the above and foregoing instrument of writing, with the certificate of acknowledgment thereon endorsed, was filed for record in my office on the 4th day of December, A. D. 1875, and has been duly recorded in Book 84, page 163.

Witness my hand and seal of said office this sixth day of December, 1875.

MICHAEL CRAWFORD, *Recorder.*

"EXHIBIT H. H."

Wm. McCully & Co.,
18 & 20 Wood street.

Picture McCully store. = 53848. Picture glass factory.

$148.34. PITTSBURGH, *April 28th*, 1884.

At sight, after date, pay to the order of ourselves one hundred forty-eight & $\frac{34}{100}$ dollars, with exchange on Pittsburgh or N. Y., at ——, value received, and charge to account of—

WM. McCULLY & CO.

To Richmond Medical Co., St. Joseph, Mo.

No. 5082.

[Written across the face:] Paid. State savings bank, St. Joseph, Mo.

1363–1394 PITTSBURGH, PA., *April 26th*, 1884.

Dr. S. A. Richmond Med. Co., St. Joseph, Mo., bought of Wm. M'Cully & Company, manufacturers of vials, bottles, & window glass.

5 casks,	$25\frac{1}{2}$	gro., 8-z. panels, O. M., 4.00.....	100 50
7 lb.	$24\frac{11}{12}$	" 2 " pill bottles, flint, O. M., 1.92.....	47 84
			148 34

"Exhibit H. H."

PITTSBURGH, *April* 28, 1884.

Richmond Med. Co., St. Joseph, Mo.

DEAR SIRS: We have this day made draft on you, dated April 28, '84, at sight for $148.34. B. L. attached. Amount of your invoice herein, which please protect, and oblige.

Very respectfully. WM. McCULLY & CO.

"Exhibit H. H."

1392 United States Patent Office.

In Re Interference RICHMOND *vs.* THE DR. S. A. RICHMOND NERVINE COMPANY. | Trade-mark for Medicine. No. 13403.

WASHINGTON, D. C., *April* 13, 1889—11 o'clock a. m.

Present: Wm. Henry Browne, solicitor for *application*, and Hon. Benjamin Butterworth, counsel for defendant corporation.

SAMUEL A. RICHMOND, a witness of lawful age, called by and on behalf of the appellant himself, having been first duly sworn, is examined by Mr. BROWN:

1393 Q. Please state your name, residence, and occupation.

A. Tuscola, Douglas county, State of Illinois; my occupation, manufacturer of proprietary medicines; my age is 41 years. I am the applicant in this case of interference now pending in the Patent Office. The matter in controversy is in regard to a trade-mark, for the registration of which I have filed an application, and which trade-mark, I am informed and believe, has been registered by the corporation known as the Dr. S. A. Richmond Nervine Company of St. Joseph, Mo. That trade-mark consists of the portrait of myself and it is exactly that which is used by said corporation. It is a trade-mark for a proprietary medicine, and the goods manufactured by both parties is substantially the same.

(By Mr. BROWN:)

Q. Please state when you first adopted that trade-mark, to what kind of goods it was applied, and the circumstances under which you adopted it and to whom that trade-mark now belongs.

A. I first adopted it in July, 1884—that is, I first used it on goods in that month. It was applied by me to nervine. The nervine is known as Dr. S. A. Richmond's Samaratine nervine, manufactured by the World's Medical Association in Chicago, Illinois, No. 559 State street, I being sole proprietor. As near as I can remember, it was in the month of March, 1884, that I had the portrait engraved. I had it engraved and paid for it with my own money. My object in having it engraved was to adopt a new trade-mark for nervine,

medicine for nervous diseases. When I had the engraving I had it printed on a little slip of paper and sent through the mails to my patients: then after that I had it printed in the center of four
1394 hemispheres, representing the earth's surface. This I had printed upon my letter-heads, also upon circulars and printed matter of various kinds. That trade-mark belongs to me.

Q. State in what manner you have affixed it to your medicine that you have mentioned.

A. I had it printed on the cartoon or caddy that surrounds the bottle that contained the medicine. I also had it blown in the bottle as near an imitation as I could of the engraving.

Q. State whether or not that trade-mark has continuously been so used and by whom.

A. By myself and by the Dr. S. A. Richmond Nervine Company.

Q. Under what circumstances has that company used it, and by what authority, if any?

A. That company made a contract with me to allow the use of it for the purpose in consideration of $200 a month to be paid to me.

Q. Does the authority to so use it still exist; and, if not, how did that authority cease? State facts.

A. That authority does not still exist; that authority ceased by notification by me to its president to stop its use. I notified him to that effect about 18 months ago. I was sick at that time and not able to protect myself, but as soon as I had recovered and my circumstances permitted I brought suit to stop them using it.

Q. State whether or not that trade-mark is of value to you now for the purpose for which you originally adopted it, and also state whether you have any knowledge that the said corporation is still using that as a trade-mark for its medicine.

A. It is of value to me for that purpose. I have knowl-
1395 edge from goods that I see on the market purporting to be manufactured by said corporation. For the purpose of convenience in identification I now hand you a copy of my trade-mark as used by me as I have before stated. The trade-mark itself, consisting of my portrait as shown on both parts of this (marked "Applicant's Exhibit A"), I know that the corporation named has had it registered in the United States Patent Office as its own trade-mark from the fact that I had a certified copy of the registration. I mean a fac-simile of the exhibit so far as the portrait goes—the large one. That was registered by said corporation without my consent or even knowledge.

Cross-examination.

By Mr. BUTTERWORTH:

Q. How long have you been manufacturing the medicine in connection with which you use the trade-mark in controversy?

A. About fifteen years.

Q. Was it put up in substantially the same form that it is now

during that period? I mean as to the size and shape and shape of the bottles that were used.

A. No, sir; it was not.

Q. Please state in what form—I refer to the bottle or vessel used—was it put upon the market prior to your contract with the defendant company which you say has been annulled.

A. It was used by me about three months in Chicago under the name of the World's Medical Association, located at 559 State street, about three months prior to making the contract with this nervine company. I mean to say that I used the same kind of bottles,

caddies, or cartoons, and trade-marks that I am using now,

1396 being the same that is in controversy here, for about three months prior to the making of the contract with the Richmond Nervine Company, to which I referred in my examination-in-chief. Prior to the adoption of the trade-mark, caddy, and cartoon last mentioned, which was about three months prior to the lease to the nervine company mentioned, I used what was known by the trade as a short six-ounce panel bottle with my name, Dr. S. A. Richmond, blown on one side of the bottle; St. Joseph, Mo., on the other, and I used a plain salmon-colored wrapper, which I wrapped around the bottle, and on the side near the top was a trade-mark of a man falling in a fit. I hereto attach, without giving a full and detail description, a specimen of the wrapper and trade-mark then used (the said exhibit is marked "Applicant's Exhibit B"). This trade-mark is the only one used by me in connection with said nervine medicine prior to the adoption of the one described in Exhibit A, heretofore referred to. The bottle now used by me in connection with the trade-mark in controversy is what is known as a panel bottle, holding about nine ounces and a half, with my picture blown in the glass, as stated in my examination-in-chief. The contract mentioned by me by which I made an arrangement with the Richmond Nervine Company to use my trade-mark covered the trade-mark in controversy here and the make of bottle I have hereinbefore described. I file as exhibits a specimen of each of the bottles used, with trade-marks attached (marked "Applicant's Exhibit C and D").

Q. Was the contract between yourself and the Richmond Nervine Company in writing?

A. Yes, sir.

1397 Q. Have you a copy of said contract; and, if so, will you produce it?

A. I have no copy with me, for the Richmond Nervine Company are in possession of my papers.

Q. How long was said contract in force, as you understand it?

A. About three years.

Q. Were you connected with said company during said period; and, if so, in what capacity?

A. I was connected with said company a portion of the time in capacity as its general business manager.

Q. Give the date of your alliance with said company and the date when you understand your connection with it to have ceased.

A. I was actively participating in the management part of the time, but connected with the company continually up to the time that I notified the president to cease using my trade-mark. I will have to examine some memoranda I have in order to give the exact or substantially the exact dates. The date is at my hotel. I will get it after adjournment and bring it with me at the next meeting.

Q. Has any other person had or does any other person now have any interest in the manufacture of this nervine medicine or the trade-mark used in connection therewith since your contract with the Richmond Nervine Company except said company?

A. Not that I am aware of. No one has acquired any interest from me.

Q. Do you carry on business in manufacturing this nervine medicine anywhere except at the place you have mentioned in Chicago; if so, where?

A. I do not manufacture in Chicago, but am preparing to manufacture the medicine in Tuscola, Ill.

1398 Q. Where did you last manufacture or prepare this nervine medicine?

A. I have manufactured the medicine at Tuscola, Ill., but not to put on the market.

Q. What quantity of the medicine have you manufactured at Tuscola since your separation from the S. A. Richmond Nervine Company?

A. In a small way or small quantity.

Q. Are you able to state with greater accuracy what quantity you have manufactured and how much you have put upon the market?

A. I am not able to state.

Q. Will not your books show how much and to whom you have sold during the period mentioned?

A. During that period I have not sold to any one.

Q. Then I understand that since your separation from the S. A. Richmond Nervine Company and the giving of notice to said company to cease using your trade-mark that, while you have manufactured some of the medicine, you have not put any upon the market?

A. Yes, sir.

Q. Are you able at this time to give the precise date of your separation from the company and the service of the notice mentioned?

A. It was during the month of November, 1887.

Q. Did you give the notice mentioned at the same time that you separated from the company?

A. Yes, sir.

Q. What quantity or amount of this medicine have you on hand prepared?

A. I don't know that I have any.

1399 Q. Do you desire that I shall understand that what you have done in the direction of manufacturing this medicine since your separation from the S. A. Richmond Nervine Company is in the line of experiment, preparing new medicines or improving this, and not manufacturing for the market?

A. It is an experiment with a desire to improvement.

Q. Then you have not engaged in the manufacture and sale of this nervine medicine since your separation from the company, but have been experimenting and preparing to engage in the business—that is, to manufacture and sell. Am I correct in this understanding?

A. Yes, sir.

Q. The S. A. Richmond Nervine Company was an incorporated company, was it not?

A. Yes, sir; said company was incorporated on December 10, 1884, by S. A. Richmond, Michael A. Draut, and John Christ.

Q. Who owned the original trade-mark which was attached to this nervine medicine prior to its being acquired, if it was acquired, by the Dr. S. A. Richmond Nervine Company, if you know?

A. My brother, James A. Richmond.

Q. Your brother, James A. Richmond, owned the entire business—that is, the formula, trade-mark, and good will of the business—did he not? I refer to the trade-mark used prior to the modification you have mentioned, to wit, the representation of a man falling in a fit.

A. He owned the trade-mark of the man falling in a fit. He owned the formula, trade-mark, and good will of the business also.

Q. He sold and assigned all his interest just mentioned to the Dr. S. A. Richmond Nervine Company, did he not?

1400 A. Yes, sir.

Q. How long prior to the sale and assignment by James A. Richmond of the interest last mentioned to the Dr. S. A. Richmond Nervine Company did you adopt the trade-mark in controversy?

A. About five months.

Q. Who owned the trade-mark, formula, and good will of the business of manufacturing and selling this nervine medicine at the time the trade-mark in controversy was adopted?

(Question withdrawn.)

Q. The original trade-mark represented by a man falling in a fit, the formula and good will of the business prior to 1884 for several years belong to the Dr. S. A. Richmond Medical Company, did it not?

(Question excepted to by counsel for the applicant as irrelevant and incompetent.)

Counsel for defendant company says the question is preliminary to other questions to be asked which will develope its competency and relevancy.

On advice of counsel, witness declines to answer.

Q. Your brother, James A. Richmond, was the owner of the franchises, trade-mark, formula, good will of the business of medicine on hand immediately prior to the sale and assignment to the Dr. S. A. Richmond Nervine Company, was he not?

A. I cannot answer the question embodied in the way you have

it. He owned the trade-mark of a man falling in a fit and the formula and good will for the manufacturing of Dr. Richmond Samaratine nervine as put up and manufactured in what is known as the old style—that is, the same nervine medicine, but put up under the original trade-mark.

1401 Q. State who owned the formula, trade-mark, and good will of the business of manufacturing the said nervine medicine at the time the trade-mark in controversy was adopted?

A. My brother, James A. Richmond, owned the old trade-mark of a man falling in a fit and the formula and good will of the business at that time.

Q. By whom was the business of manufacturing and selling the medicine carried on at the time the trade-mark in controversy was adopted?

A. By myself individually.

Q. Did you carry on the business in connection with anybody else; and, if so, where and with whom?

A. I did not.

Q. At the time the trade-mark in controversy was adopted was the old one abandoned except as to such medicines as were always on the market?

A. No, sir; it was not.

Q. Who was using the old trade-mark?

A. I was.

Q. Were you manufacturing at that time any other medicine than the nervine medicine?

A. Yes, sir.

Q. What other medicine?

A. A pill.

Q. Was the same trade-mark used on the pills?

A. No, sir.

Q. Then the trade-mark of the man falling in a fit and the trade-mark in controversy have only been used and are only used, so far as you know, in connection with this nervine medicine?

1402 A. Yes, sir; only in connection with that medicine.

Q. Am I to understand that there were two companies, or yourself and another company, manufacturing and selling this medicine under these trade-marks at the same time during 1884 and 1885 or at any other time?

A. Not to my knowledge.

Q. Who were interested with you in the manufacture and sale of this nervine medicine at the time the adoption of the trade-mark in controversy?

A. There was no one.

Q. How do you dissociate the trade-mark in controversy from the formula and good will of the business which belonged to others?

(Question withdrawn.)

Cross-examination of the witness, Dr. S. A. RICHMOND, resumed.

By Mr. BUTTERWORTH:

Q. At the close of your examination yesterday you said you would have to examine some written memoranda in order to answer definitely my question with reference to certain dates; have you that memoranda with you? If so, please continue your answer.

A. I was closely engaged as the company's general business manager until about the 1st of January, 1886, and continued to give counsel and to direct them what to do at intervals during the years 1886 and 1887 up to about the 1st of November, 1887.

Q. Were you at any part of that time treasurer of said company?

A. No, sir.

Q. Then if I understand the order of events as detailed by you they are as follows: The trade-mark in controversy was prepared and adopted for use in connection with this nervine medi-

1403 cine, the new wrapper and larger bottle adopted in the first half of 1884 or in July of that year. Am I right in this?

A. It was adopted by me on or before the 1st of April of that year, 1884, but not actually placed upon goods until the month of July, 1884. The bottle, cartoon, or caddy surrounding the same were adopted by me at the same time, in April, but not used by me until July.

Q. Then I understand you that the trade-mark in controversy and the bottle and caddy or cartoon enclosing the same were adopted for use in connection with the nervine in April, 1884, but not actually used until July of that year?

A. Yes; it was adopted by me, but not used until July.

Q. At the time of the adoption of the trade-mark, bottle, and wrapper who owned the formula, good will of the business, and had charge of the manufacture and sale of the nervine medicine?

A. The Dr. S. A. Richmond Medical Co. owned it then.

Q. Were you connected with that company as a stockholder or otherwise at that time?

A. I was.

Q. Were not these changes and modifications in the trade-mark, bottle, and wrapper made for that company and with its approbation and consent?

A. No, sir; it was not.

Q. Did that company prior to July, 1884, use the trade-mark in controversy or the large bottle and wrapper?

A. No, sir; they did not.

Q. In May of that year or about that time the S. A. Richmond Medical Company made an assignment of its interest and effects for the benefit of its creditors, did it not?

1404 A. Yes, sir.

Q. Your brother, James A. Richmond, subsequently by purchase became the owner of all those rights and interests, including the trade-mark, whatever it was, to which the company had a right, the good will of the business, etc., did he not?

A. Yes, sir; he bought the trade-mark of a man falling in a fit and the good will of the business for the manufacture of Samaratine nervine.

Q. Between the date of the assignment and the purchase of the formula, good will, etc., by James A. Richmond, who, if anybody, manufactured and sold this nervine medicine?

A. I manufactured and sold it under the name of the World's Medical Association at 559 State street, Chicago, Ill.

Q. At what time did you establish yourself at the place mentioned in Chicago and begin the manufacture and sale of this nervine medicine, or about what time, nearly as you can state?

A. In the month of July, 1884.

Q. Was any one interested with you in the business carried on in Chicago?

A. No, sir.

Q. Did you, in conducting the business, use trade-marks or only the one in controversy?

A. I used them both.

Q. How long were you in business in Chicago manufacturing and selling this medicine?

A. About three months.

Q. Did you use the trade-mark and formula in pursuance of any arrangement with the assignee or owners of the formula and old trade-mark?

1405 A. No, sir; I did not.

Q. Was the business done by you during the three months at Chicago extensive?

A. It was.

Q. Did you continue to do business in Chicago up to the time of the formation of the Dr. S. A. Richmond Company, with which you became associated in December, 1884?

A. No, sir; I did not, because I had entered into a contract with the incorporators of said Richmond Nervine Company by which I was to return to St. Joseph, Mo., and become the company's general business manager for the use of my trade-mark, cartoons, and pictures. Said company was to pay me $200 per month, in addition to which they were to give me all the proceeds from what was known as the "patient trade." Upon these terms and conditions I entered into a contract with the said incorporators of the Richmond Nervine Company.

Q. If I understand you, in addition to the $200 per month you were to have free of charge whatever medicine you might require to supply your patients and the money received for that medicine was your own?

A. Yes, sir.

Q. I understand you, then, that the trade-mark in controversy was not used in St. Joseph or by the owners of the formula and good will of the nervine medicine business until you arranged to take charge of the management of the Dr. S. A. Richmond Nervine Company. Am I right?

A. It was used by me on a printed slip, also printed upon my

letter-head, surrounded by four hemispheres, representing the earth's surface, which I used in correspondence with my patients.

1406 It was also used upon circulars for the same purpose, but it never was used as a trade-mark upon goods until used by me in the month of July, 1884, at 559 State street, Chicago, Ill.

Q. Has this trade-mark, I mean the one in controversy, ever been used except in connection with this nervine medicine?

A. No, sir; it has not.

Q. At what time did you regard your separation from the Dr. S. A. Richmond Nervine Company as complete, if it is complete?

A. About the 1st of November, 1887.

Q. Did you obtain from said company the right to manufacture said medicine or use said trade-mark or any trade-mark in connection therewith?

A. No, sir; they received the right from me to use said trade-mark.

Q. Have you in fact manufactured the medicine and used the trade-mark in controversy or the old trade-mark in controversy with the manufacture and sale of said medicine since you *seved* your connection with the company?

A. Yes, sir; I have never ceased its use.

Q. Are you manufacturing and selling said medicine at the present time?

A. Well, while located in Chicago I overstocked the market with the said Samaratine nervine, manufactured by me at 559 State street. The sale of said goods have been continuous ever since and are now at the present time upon the market. I am manufacturing now at the present time at Tuscola, Ill., more by way of experimenting with the view of improving said nervine. I have never ceased to use the said trade-mark and have never even thought of its discontinuation.

Q. Are you now or have you at any time since you lo-

1407 cated at Tuscola, Ill., manufactured the nervine medicine for sale to customers and have you engaged in the sale of the medicine in any quantity?

A. I have manufactured no goods at Tuscola, Ill., by which I have applied the said trade-mark of a man falling in a fit, but I am having sold through the drug trade at Tuscola, Ill., and elsewhere my old stock of nervine, manufactured in Chicago by me at 559 State street. Said goods has the trade-mark of a man falling in a fit as well as my trade-mark now in controversy.

Q. Have you manufactured and are you manufacturing this nervine medicine of which we have been speaking at Tuscola, Ill., or elsewhere since your separation from the company in November, 1877?

A. Yes, sir; I have the very same identical medicine, only in a small way.

Q. Then I understand you are manufacturing this medicine, to wit, the nervine medicine of which we have been speaking, at Tuscola, but only in a small way. Am I right?

A. Yes, sir.

Q. Are you selling said medicine through the drug trade or otherwise with either of the said trade-marks attached?

A. Only my old stock, as already stated—that is, to the drug trade.

Q. What disposition are you making of the stock of nervine medicine you are manufacturing at Tuscola?

A. None whatever. I am trying to work off the old stock that is now on the market before introducing the new.

Q. Have you made preparations at Tuscola to manufacture this nervine medicine in amounts or quantities to supply the trade and the old stock shall have been exhausted?

1408 A. Yes, sir; I am.

Q. Have you the stock of the newly prepared medicine on hand at this time put up in bottles or otherwise?

A. I have some put up in bulk.

Q. Then, if I understand you, you claim the legal right to manufacture and sell this nervine medicine and use either or both of the old trade-marks in connection with such manufacture and sale?

A. I claim the legal right to manufacture said nervine and to use the trade-mark now in controversy; also my other trade-mark, which has been granted to me by the Patent Office authorities on or about the 19th day of March, 1889. The trade-mark of a man falling in a fit I do not claim as my property; therefore do not expect to use said trade-mark on my goods manufactured by me at Tuscola, Ill.

Q. The trade-mark registered by you on the 19th of March, 1889, differs with the trade-mark in controversy by the addition of four hemispheres about the head?

A. The difference will be seen by an examination of my Exhibit "A," which gives a fac-simile of both trade-marks; the said trade-mark registered by the Dr. S. A. Richmond Nervine Company.

Q. Are you using and is it your purpose to continue to use the trade-mark registered by you on the 19th of last month in connection with the manufacture and sale of the nervine medicine of which we have been speaking?

A. Yes, sir.

Q. You speak of having had and still having a stock of this nervine medicine on hand which was left over from your Chicago stock. Have you been and are you still selling said stock to the old customers of the Dr. S. A. Richmond Nervine Company?

1409 A. Yes, sir.

Redirect examination.

By Mr. BROWNE:

Q. In your previous testimony on cross-examination you have said something about putting your goods bearing the trade-mark in controversy upon the market. Where did you find that market and what do you mean by the term?

A. I found that market in the United States, Canada, England, Scotland, Ireland, and other places throughout the world.

The applicant here makes a statement that he wishes to explain the dates in connection with the history of adoption of the picture now forming the trade-mark in controversy. He states as follows: In the month of December—about the 12th—1883, I received from the engraver the said portrait engraved on wood. In my testimony yesterday I was questioned as to the label to be affixed to the cartoon as is shown in my Exhibit A. I am now speaking of my portrait which constitutes the trade-mark in controversy. I had it engraved in December, 1883.

Recross-examination.

By Mr. BUTTERWORTH:

Q. Each of the trade-marks prepared by and adopted by you and referred to in your testimony was prepared solely for use and used solely in connection with the manufacture and sale of the nervine medicine; am I right?

(Question withdrawn.)

Q. The trade-mark in controversy and the trade-mark of the man falling in a fit were each designed to be used and were and are used exclusively in connection with this nervine medicine; am I right?

1410 A. Yes; by me.

SAMUEL A. RICHMOND.

JAMES A. RICHMOND, a witness of lawful age, called by and on behalf of the applicant, having been first duly sworn, is examined—

By Mr. BROWNE:

Q. Please state your name, age, residence, and occupation.

A. My name is James A. Richmond; age, 44; Villa Grove, Ill.; farming.

Q. Are you the same person described as the president of the Dr. S. A. Richmond Nervine Company?

A. Yes, sir; I am.

Q. That was organized December 10th, 1884?

A. Yes; it was.

Q. State who was the owner of that trade-mark prior to the organization of that company—I mean the trade-mark in controversy.

A. Dr. S. A. Richmond, my brother, now present.

Q. How did your corporation acquire a right to its use, if at all?

(Counsel for defendant corporation asks witness if the contract he is about to describe is in writing and he answers that it is, to the best of his knowledge.

Thereupon counsel for defendant corporation objects to the witness stating the contents of the written instrument.)

—. We were to give him $200 a month as business manager and for the use of his cartoon and picture—that is, the trade-mark in

controversy—and he was also to have the benefit of the patient orders.

Q. State if you know who owns the trade-mark in controversy at this time.

A. Dr. S. A. Richmond, the applicant.

1411 Q. When did the corporation begin its business? I mean the Dr. S. A. Richmond Nervine Company.

A. In December, 1884.

Q. And where?

A. St. Joseph, Mo.

Q. Is that corporation still in operation?

A. Yes, sir.

(Counsel for applicant here offers in evidence a certificate from the secretary of state of the State of Mo. as to the corporate existence of the Dr. S. A. Richmond Nervine Co., marked "Applicant's Exhibit E.")

Cross-examination.

By Mr. BUTTERWORTH:

Q. Where did you reside in 1884?

A. Douglas county, Ill.

Q. You were a member of the incorporative company known as the Dr. S. A. Richmond Medical Company, were you not?

(Objected to on the ground that it is not proper cross-examination.)

A. Yes, sir.

Q. That company was the owner of the formula, trade-mark, and good will of the business of manufacturing and selling this nervine medicine, was it not? I refer now to the trade-mark of a man falling in a fit.

A. The company owned that trade-mark; also the formula and good will of the business.

Q. That company made an assignment for the benefit of creditors in the early part of 1884, did it not?

A. It did.

1412 Q. Do you remember whether, prior to the assignment, there had been any change in the size of bottles used or in the trade-mark or wrappers?

A. There were some changes made, but not used.

Q. Please state what changes have been made and about the time, as nearly as you can state.

A. The change was made some time in the spring, but I could not say when.

Q. Was the change made from the smaller to the larger panel bottle now in use?

A. Yes, sir; it was.

Q. Was the change in the trade-mark from the man falling in a fit to that of a picture of Dr. S. A. Richmond?

A. That was changed at that time, but they used both trade-marks.

Q. Was any of the medicine put in the larger bottles with the trade-mark embodying the picture of Dr. S. A. Richmond put upon the market prior to the assignment?

A. I think not.

Q. Then, if I understand you, the company had adopted these changes—that is, had adopted the large bottle and the trade-mark of a portrait of Dr. S. A. Richmond—but had not sold medicine upon the market put up in those bottles and with the trade-mark just mentioned attached?

A. The medical company never.

Q. I understood you to say that these changes were made prior to the assignment, but were not used in the business.

A. Yes, sir.

Q. Was the nervine medicine put up in the large bottles and the trade-mark of a portrait of Dr. S. A. Richmond attached prior

1413 to the assignment?

A. It was not.

Q. What do you mean by saying the change from the small bottles to the large ones and in the trade-mark the change from a man falling in a fit to the trade-mark which embodies a portrait of your brother was made prior to the assignment? State what was done in that behalf prior to the assignment with reference to these matters.

A. The doctor got the cartoons ready and sent for a car-load of bottles.

Q. How long prior to the assignment were these bottles and cartoons ordered and prepared?

A. As to that, I couldn't say. The bottles never came until after the assignment was made.

Q. Was the doctor then managing for the Dr. S. A. Richmond Medical Company?

A. No, sir; he was not.

Q. Was he connected with the company?

A. He was.

Q. In what capacity?

A. I think he was conducting their advertising; that was the principal part of his work.

Q. Did he not also superintend the preparation of the medicine?

A. I think he did.

Q. Was the preparation of the cartoons and caddys and the bottles a part of his duty in connection with the business of the company? I mean the Dr. S. A. Richmond Medical Company.

A. He run the advertising and had the wrappers, etc., prepared.

Q. Do you remember where these bottles were ordered?

1414 I mean from what manufacturing firm.

A. I do not know.

Q. Were you in St. Joseph at any time prior to the assignment of the company?

A. I was there at the time of the assignment.

Q. How soon after the assignment did the car-load of bottles reach St. Joseph, if you know?

A. Well, I don't recollect now how soon it was.

Q. Were they taken charge of by the assignee of the company?

A. I don't recollect that.

Q. Was there in stock of the company at the time of the assignment any copies of the trade-mark in controversy or of the new style of wrappers which had been prepared, if you know?

A. I think he had a few cartoons of samples; that is all I have ever seen.

Q. This consignment of bottles and trade-mark in controversy were for the use of the company—that is, the Dr. S. A. Richmond Medical Company—in the conduct of its business, were they not?

A. I think not; they were shipped in his name.

Q. Was Dr. S. A. Richmond and the Dr. S. A. Richmond Medical Company each carrying on business separate and apart from each other?

A. No, sir.

Q. Then, except for the assignment, would not these bottles and the trade-mark in controversy have been used in the manufacture and sale of the nervine medicine by the company?

A. Well, there was a time set before the assignment that the bottles were sent.

Q. Were you advised of this consignment of bottles before your company made the assignment?

1415 A. I was.

Q. I understand you that at the time of which we are speaking the company of which you were a member, and connected with which Dr. S. A. Richmond was, to wit, the Dr. S. A. Richmond Medical Company, was the sole owner of the formula, trade-mark of a man falling in a fit, and the good will of the business for the manufacture and sale of this nervine medicine; that is the fact, is it not?

A. I think the medical company was the owner of it.

Q. Then these bottles and the advertising of which Dr. S. A. Richmond had charge were intended for the use of this company, were they not?

A. They were not.

Q. For whom were these bottles, cartoons, and caddys purchased and prepared, if you know?

A. Dr. S. A. Richmond.

Q. Did Dr. S. A. Richmond procure these bottles and prepare the new trade-mark to be used in connection with the manufacture and sale of the nervine medicine in pursuance of any arrangement with the Dr. S. A. Richmond Medical Company?

A. I was a stockholder and know nothing of it myself, and I know he sent for the bottles and paid for them out of his own money.

Q. Did the Dr. S. A. Richmond Medical Company keep back any of its property or interest which it did not include in its deed of assignment?

A. It assigned everything it had.

Q. You subsequently in the latter half of 1884 became the purchaser, did you not, of the interest, right, and the property assigned by the Dr. S. A. Richmond Medical Company?

1416 A. Some time in June, 1884; yes, sir.

Q. Did you and two associates, to wit, Mr. Michael Drout and John Christ, from and after your purchase continue to manufacture and sell this nervine medicine?

A. I had nothing to do with it whatever.

Q. What disposition did you make of the rights and interests you purchased as aforesaid?

A. I assigned them all over to the Dr. S. A. Richmond Company.

Q. Was Mr. Christ or Mr. Drout interested with you in your purchase from the assignee?

A. No, sir; there were nobody interested with me in that.

Q. How long did you own the property, rights, and interests which you afterwards sold to the Dr. S. A. Richmond Nervine Company?

A. From May to the 1st of December.

Q. During that period did you sell or assign any part of that property or those rights and interests?

A. I did not.

Q. So that all the property, rights, and interests which you acquired by your purchase you sold and transferred to the Dr. S. A. Richmond Nervine Company?

A. Yes, sir.

Q. The company paid you $3,000 for the property, rights, and interests transferred by you to it, did it not?

A. I do not just exactly recollect what I did get out of it.

Q. How long were you connected with the Dr. S. A. Richmond Nervine Company as a stockholder or otherwise?

A. I am still a stockholder, and have been connected with it ever since its organization.

Q. You have used or your company has used the trade-

1417 mark in question in connection with this nervine medicine since its adoption down to the present time, has it not?

A. Yes, sir.

Q. Do you know of the trade-mark in controversy being used in connection with any other medicine or for any other purpose?

A. I do not.

Q. Was the evidence of the sale and assignment of the property, rights, and interests which you afterwards sold to the Dr. S. A. Richmond Nervine Company in writing?

A. Oh, yes.

Q. Have you a copy of that bill of sale and assignment; and, if so, will you please produce it?

A. I have a copy, and if I can find it I will produce it and furnish the notary with a copy thereof.

Q. Have you any interest with your brother, Dr. S. A. Richmond, in the manufacture and sale of this nervine medicine, referred to

as the Samaratine nervine medicine, conducted by him at Tuscola, Ill.?

A. None whatever.

Redirect examination.

By Mr. BROWN:

Q. Do I understand you to have testified or meant to say that when you transferred your rights to the Dr. S. A. Richmond Nervine Company you claimed to be the owner or to have been such of the trade-mark in controversy—I mean your brother's portrait? Answer fully.

A. I turned over nothing but what I bought—of a man falling in a fit. I never claimed to be the owner of the trade-mark in controversy—I mean the picture of my brother, Dr. S. A. Rich-
1418 mond.

Objected to by counsel for the defendant corporation as stating legal conclusions.

Dr. S. A. RICHMOND recalled.

By Mr. BROWN:

Q. Will you please state your knowledge as to facts involving time or place of the delivery of the cartoons and bottles to the Dr. S. A. Richmond Medical Company referred to in the testimony of the preceding witness, James A. Richmond?

A. About a week after the assignment was made there was a sample lot of the cartoons delivered to me, and I put them in the building by consent of the assignee, but there were none delivered before. I wired the manufacturer of the Novelty Paper Box Company of Philadelphia not to fill orders, to hold, and that I would write full particulars, and then wrote to them to change the label, and change the label to the World's Medical Association and ship to 559 State street, Chicago, Ill. My instructions were complied with. As to the bottles, I ordered them shipped to St. Joseph, Mo., and the manufacture to draw with bill of lading to be paid for on delivery. About ten days after the assignment was made the goods arrived at St. Joseph, and the bank on which the draft was made presented it and I refused to pay and notified the manufacturer to store the bottles in St. Joseph, Mo., and I would pay for them when I received them. I afterwards directed the manufacturer, McCulley & Co., of Pittsburg, Penna., to reship the goods to 559 State street, Chicago, and I would pay for them on delivery. They did so. I had ordered them to be shipped to the World's Medical Association, 559 State street, Chicago, Ill. I now produce and file
1419 cartoon, marked Applicant's Exhibit "F," and also bottle, which has been already filed and marked Exhibit —. I also file my Exhibit "H," which is a copy of the letter-head bearing my portrait and four hemispheres, referred to in my testimony. The first time my portrait was ever used was as shown in slip Exhibit H.

Cross-examination.

By Mr. BUTTERWORTH:

Q. What relation did you sustain to the Dr. S. A. Richmond Medical Company, official or otherwise, prior to the assignment?

A. I was its president and general advertising agent—that is, I had charge of the advertising department and the compounding and mixing of the medicine.

Q. You then had entire charge of the manner of preparing and putting up the medicine for sale?

A. Yes, sir.

Q. It was your business or official duty to prescribe the character of bottle, form of wrapper, and everything pertaining thereto?

A. Not without the approval of the company.

Q. It was your duty, subject to the approval of the company, as I understand you?

A. I was under no obligation to do so.

Q. Who was the business manager of the company, if you were not?

A. One Winslow Judson.

Q. Were you authorized to make any change in the wrapper or size or shape of bottle without the approval of the company?

A. I was not.

Q. You were not authorized to prepare or adopt any new trade-mark without the authority of the company, then, if I understand you?

A. I was not, because I proposed to go in business myself.

1420 (The last part of the answer is objected to as not responsive to the question.)

Q. In your redirect examination you state that you wrote to the manufactures of the cartoons to change them to the World's Medical Association. How did that change the cartoon from that as originally ordered—in other words, of what did that change consist?

A. It consisted of the striking out of the Dr. S. A. Richmond Medical Company and inserting the World's Medical Association.

Q. Did you call the attention of the assignee of the Dr. S. A. Richmond Medical Company to the arrival of the consignment of bottles hereinbefore referred to?

A. No, sir; I did not.

Q. Were the bottles in that consignment the same as the one offered as an exhibit in this case? I mean the nine and a half ounce bottle.

A. Yes, sir.

Redirect examination.

By Mr. BROWNE:

Q. Why did you have the labels on the cartoons altered, as you have stated?

A. At the time that the order for the cartoons was given I knew that the company was involved and would have to make an assignment, and I expected to buy it in and carry on business under the old name. After the assignment it assumed a different attitude from what I had expected. I then dropped the name of the Dr. S. A. Richmond Medical Company from the cartoon and inserted that of the World's Medical Association. I knew that the supply of medicine of the company was likely to be exhausted and I wished to be able to supply the demand, and then I proceeded to
1421 open up my place of business in Chicago, Ill.

By Mr. BUTTERWORTH:

Q. Did you change the cartoon in the manner you have suggested and change the consignment of bottles in pursuance of any arrangement made with the Dr. S. A. Richmond Medical Company?

A. I never had any arrangement with that company.

Q. Then the change you made and the starting of business in Chicago was all made and done without the consent or approbation of the old company. Am I right?

A. Yes, sir.

JAMES A. RICHMOND.

1421–64 *Epitome No. 3.*

In rebuttal the complainant (the appellant in this court) called the following witnesses:

EVA E. RICHMOND, being duly sworn, was examined, and testified as follows:

I was Dr. Richmond's wife; was divorced two months
1421–65 ago; knew Dr. Richmond's financial condition from 1878 to 1882; he was in debt a great deal. I gave the Dr. $1,000 my father gave me after he engaged in business in St. Joseph, Mo. (preparing his Samaritan nervine); also some land worth $700, which the Dr. received. Father (Mr. Shannon) gave me $50 at one time and $300 at another time, which I gave to the Dr. When I gave him this money he was making medicine on the cooking stove at home; he had no means except what he got from me or my father. I was given the stock for what I had given him, and to support me and my children. I never had any such conversation as the witness Mattie Richmond mentions. The subject she speaks of was never mentioned between us. I never said what I am reported to have said at Mr. Bragg's—that is, that I held the stock in trust for Dr. Richmond. There was no conversation about the business or the note or anything pertaining thereto. The subject was never mentioned between Mr. Bragg and myself. I never stated that I held the stock or my home in trust or for the benefit of Dr. Richmond.

Synaca Taylor came to our house while doing some business for the medical company; has no recollection of the conversation or statements by Dr. Richmond being made in her presence as Mr.

Taylor suggests. I was busy about my household duties
1421–66 and paid no attention to what they said.

Cross-examination:

I was married to Dr. Richmond in December, 1871. The Dr. had nothing that I know of. After we came here to St. Joseph he did not know what to go at, and tried the real-estate business for a short time. The first money I gave him was in 1874, $1,000; also $50 at different times.

Dr. Richmond killed Col. Strong the 18th of June. The Dr. was sent to the asylum in August and stayed fourteen months.

Redirect examination:

There never was any arrangement or understanding that I would hold stock or property in trust for Dr. Richmond. I paid the Dr.'s board and for a guard at the asylum and for his clothes. I was stricken with grief after the Dr. ran away, but soon after I went to the office and took charge of the business, paid bills, &c. I have six children whom I support since the Dr. ran away. The oldest is in her seventeenth year, and the baby is between four and five years of age. The letter written to Fannie Bragg, of June 10th, 1886, was
written when Dr. was affecting insanity. I asked the Dr.
1421–67 why he had not had a spell when the insane man was here. He said, "There were no men around to hold me." (Witness continues:) The Dr. received all the benefits while he managed the business; witness never received any dividends. The Dr. collected it all as her husband and as her agent. He ran off, taking the money with him; left witness with a baby and five children; bills unpaid. Witness never told James A. Richmond that she held the stock in trust for the Dr.

JOHN F. TYLER, being duly sworn and examined, testified in substance as follows:

I am an attorney-at-law; was the assignee of the Dr. S. A. Richmond Medical Co.; have known Dr. Richmond ever since he came to St. Joseph. When he came he had comparatively nothing. I never saw the ten-thousand-dollar note given by Dr. Richmond to Eva E. Richmond before or since it was produced on taking the deposition in this office within the last twelve months; never advised the issue of stock to Eva E. Richmond to hinder creditors; that Dr. has told me that everything he had was based on what he got from his wife, and that he was determined she should have the benefit in any event. I had been Dr. Richmond's legal adviser. I
only know about his having no property from what he
1421–68 told me, and he was always trying to borrow money.
As assignee of the Dr. S. A. Richmond Medical Company I sold cartoons, caddies, and bottles.

Cross-examination:

Never during the assignment or at any other time did I hear that the stock was not the property of Eva E. Richmond. It was so treated by everybody.

MICHAEL J. DROUT called.

Was a shareholder in the S. A. Richmond Medical (?) Company and am now; was secretary of said company. I bought one share and paid $100 for it. I never heard any such talk as that I or Eva Richmond held stock in trust for Dr. Richmond. The stock is my own. I paid for it and voted it and drew dividends on it. I heard Dr. Richmond say frequently that he had no interest in the stock held by his wife; that the shares were her own and were transferred to her on account of moneys given by her out of which he had made the business. Witness said Dr. Richmond testified, in giving his deposition in the cases at Columbus, Ohio, that he only owned one share in the company, and the others bought the stock and were entitled to hold it. There were cartoons and wrappers with the portrait of Dr. Richmond and his portrait surrounded by four globes and the eight-ounce bottles, new style, assigned
1421–69 by the company to John F. Tyler, assignee, and were replevined afterwards.

I drew a dividend on my stock and deposited the same in the bank (witness shows entry in his bank book depositing a dividend on one share of stock June 26, 1885). (Witness continues:) Dividend was paid me by Dr. S. A. Richmond; witness always voted his own stock; James A. Richmond got his dividends. Witness never told James A. Richmond that he held the stock in trust for S. A. Richmond; never saw or heard of a lease of trade-marks to the Dr. S. A. Richmond Nervine Company. Dr. Richmond had full control of the business of the Dr. S. A. Richmond Nervine Company, but accounted to the company.

Mr. CAMPBELL: Age, 60 years; residence, St. Joseph, Mo.; county treasurer; know Dr. Richmond's reputation for truth and veracity; it is bad.

Mr. PIKE: Age, 39 years; residence, St. Joseph, Mo.; attorney-at-law; knows Dr. Richmond; his reputation for truth and veracity is bad.

Mr. SHEPHERD, editor: Knows Dr. Richmond; Dr. Richmond would not pay his debts; in a business way his reputation is bad.

Capt. POSGATE, postmaster and mayor of St.
1421–70–1571 Joseph: Knows Dr. Richmond; his reputation for truth and veracity is bad.

JOSEPH S. BROWN, assistant postmaster St. Joseph, Mo.: Knows Dr. Richmond; his reputation for truth and veracity is bad.

BENJAMIN J. WOODSON, attorney-at-law, St. Joseph, Mo.: Knows Dr. Richmond; his reputation for truth and veracity is bad.

1572 THE UNITED STATES OF AMERICA, }
Southern District of Illinois. }

In the Circuit Court, of the June Term, A. D. 1890.

THE DR. S. A. RICHMOND NERVINE COMPANY } Decree.
vs.
SAMUEL A. RICHMOND. }

And now this day comes the said complainant, the said The Dr. S. A. Richmond Nervine Company, which is a citizen of St. Joseph, in the State of Missouri, by John M. Palmer and S. S. Brown and Huston & Parrish, its solicitors, and the said defendant, Samuel A. Richmond, who is a citizen of the county of Douglas, in said district, by his solicitors, Connolly & Mather and C. W. Woolverton, and this cause having come on to be heard on the original bill of said complainant filed herein, the answer of said defendant thereto, and the replication of said complainant to said answer, and also upon the cross-bill and amended cross-bill of said defendant, Samuel A. Richmond, filed herein against said The Dr. S. A. Richmond Nervine Company, the answer of the said The Dr. S. A. Richmond Nervine Company to said cross-bill and amended cross-bill, the replication of said Samuel A. Richmond to said answer, and upon the testimony heretofore taken in said cause, both under said original bill and said amended cross-bill, and the court, having heard said testimony and the argument of counsel and being fully advised in the premises, doth order, adjudge, and decree that said original bill of said The Dr. S. A. Richmond Nervine Company praying that the said Samuel A. Richmond may be enjoined and restrained from in any manner making and selling Samaritan nervine and from in any manner using as trade-marks the portrait of Dr. S. A. Richmond or
1573 his portrait surrounded by four globes or the figure of a man falling in a fit, and also praying that an accounting may be had between said The Dr. S. A. Richmond Nervine Company and said Samuel A. Richmond, be, and the said original bill is hereby, dismissed on its merits for want of equity.

And it is further ordered, adjudged, and decreed by the court that said defendant, Samuel A. Richmond, have and recover from said complainant in said original bill his costs by him sustained, and that he have execution therefor, and as to said cross-bill and amended cross-bill of said Samuel A. Richmond the court doth order, adjudge, and decree that said The Dr. S. A. Richmond Nervine Company, its officers, agents, employees, and servants and all others in privity with them or either of them, be, and they and each of them are hereby, perpetually enjoined and restrained from making, selling, or disposing of, and from offering to sell, barter, or dispose of the medicine, compound, or preparation known to the public as Samaritan nervine or any other medicine, compound, or preparation having upon the bottles, labels, wrappers, or cartoons thereof the trade-mark consisting of the word and letters S. A. Richmond, M. D., and the portrait of said S. A. Richmond or any

part thereof in any manner affixed or applied thereto or blown or branded into or stenciled, stamped, or painted upon any bottle, caddy, cartoon, wrapper, or other receptacle enclosing any of said Samaritan nervine or other medicine, compound, or preparation, and also from making, selling, offering to sell, bartering, or disposing of said Samaritan nervine or other medicine, compound, or preparation having upon the bottles, labels, wrappers, caddies, or cartoons or any other receptacle thereof the trade-mark or any part thereof, consisting of the portrait of Samuel A. Richmond
1574 surrounded by the representation of four globes representing the different portions of the earth's surface, the surrounding waters, and ships sailing to various countries; also the representation of a body of water in which ships are represented as sailing to various parts of the globe; also the words "Samaritan nervine used all over the world," printed around the circumference of the representation of each of said globes; also the words and letters "The world is my field, S. A. Richmond, M. D., the people's medical servant," printed under said portrait of said Samuel A. Richmond and between the representation of the lower two of said globes, and also the words "Discoverer of Samaritan nervine, the king of all remedies," printed under said portrait and representation of said four globes.

And the court doth further order, adjudge, and decree that the said The Dr. S. A. Richmond Nervine Company, its officers, agents, employees, servants, and all persons in privity with them, be, and they and each of them are hereby, perpetually enjoined and restrained from circulating or causing to be circulated any advertising matter of any kind or character having any or any part of said trade-marks, representations, words, names, letters, or designs or any part thereof printed thereon or contained therein, or any similar trade-marks, representations, words, names, letters, or designs so nearly resembling the aforesaid as to be calculated to deceive, to advertise any medical compound or preparation by whatever name.

The court doth further order, adjudge, and decree that this decree shall supersede all interlocutory orders and injunctions heretofore made and issued in this cause; that as to all other matters
1575 contained in said cross-bill the same is hereby dismissed, and that the said Samuel A. Richmond, complainant in said cross-bill and amended cross-bill, recover his costs in this behalf from the said The Dr. S. A. Richmond Nervine Company, to be taxed by the clerk, and that he have execution therefor.

And afterwards, to wit, on the tenth day of November, in the said June term of said court, in the year of our Lord one thousand eight hundred and ninety, the following further proceedings were had in open court and entered of record, to wit:

DR. S. A. RICHMOND NERVINE COMPANY
vs.
SAMUEL A. RICHMOND. } In Chancery.

On motion of the complainant, an appeal to the Supreme Court of the United States is allowed complainant on its entering into a bond to the defendant in the penalty of one thousand dollars, to be approved by the clerk of this court within sixty days from this date.

Afterwards, to wit, on the tenth day of December, in the year of our Lord one thousand eight hundred and ninety, came again the complainant and filed in the clerk's office of said court its appeal bond in words and figures following, to wit:

1576 In the Circuit Court of the United States for the Southern District of Illinois.

THE DR. S. A. RICHMOND NERVINE COMPANY, Appellant,
vs.
SAMUEL A. RICHMOND, Respondent. }

Know all men by these presents that the Dr. S. A. Richmond Nervine Company, as principal, and Ben. F. Caldwell, Edw. D. Keys, as security, jointly and severally acknowledge themselves to owe and stand indebted to the said defendant and respondent in the penal sum of one thousand dollars; for the payment of which, well and truly to be made, we bind ourselves, our heirs, administrators, and executors, upon condition, however, that whereas the said appellant, The Dr. S. A. Richmond Nervine Company, has appealed to the Supreme Court of the United States from the judgment and decree of the circuit court of the United States for the southern district of Illinois rendered by said circuit court in the above-entitled cause, now, if said appellant shall prosecute its said appeal to effect and if it fail to make its plea good shall answer all damages and costs, then this obligation shall be void; otherwise in full force and effect.

In witness whereof the said Dr. S. A. Richmond Nervine Company has, by its president, hereto signed its name and affixed its corporate seal and the said—

BEN. F. CALDWELL.
EDW. D. KEYS.
[CO. SEAL.] THE DR. S. A. RICHMOND NERVINE CO.
By EVA E. RICHMOND, *President.*
" M. J. DRANT, *Sec'y.*

Approved Dec. 10th, 1890.

JAMES T. JONES, *Clerk.*

1577 UNITED STATES OF AMERICA, } ss:
Southern District of Illinois, }

I, James T. Jones, clerk of the circuit court of the United States in and for the southern district of Illinois, do hereby certify that the foregoing is a true and complete copy of the papers filed and proceedings thereon had in a certain cause wherein The Dr. S. A. Richmond Nervine Company is complainant and Samuel A. Richmond is defendant, as the same appear of file and record in my said office.

In witness whereof I have hereunto set my hand and affixed the seal of said court, at Springfield, in said district, this twenty-first day of September, in the year of our Lord one thousand eight hundred and ninety-one, and of our Independence the one hundred and sixteenth year.

The Seal of the Circuit Court of the United States for the South'n Dist. Ill.

JAMES T. JONES, *Clerk.*

Endorsed on cover: Case No. 14,897. S. Illinois C. C. U. S. No. 324. The Dr. S. A. Richmond Nervine Company, appellant, *vs.* Samuel A. Richmond. Filed October 13, 1891.

"D."

UNITED STATES PATENT OFFICE.

THE DR. S. A. RICHMOND NERVINE COMPANY, of St. Joseph, Missouri.

Trade-mark for Medicine for Relieving Epileptic Fits and Other Nervous Diseases.

Statement and declaration of trade-mark No. 15274, registered March 6, 1888.

Application filed December 8, 1887.

Statement.

To all whom it may concern:

Be it known that the Dr. S. A. Richmond Nervine Company, a corporation duly and legally organized under the laws of Missouri, located and doing business at the city of St. Joseph, in the county of Buchanan and State of Missouri, has adopted for its use a trade-mark for a medicinal preparation, of which the following specification is a full, clear, and exact description.

The trade-mark consists, essentially, of an engraved portrait of Dr. S. A. Richmond, as shown in the copies of same filed. The engraved portrait of Dr. S. A. Richmond is a three-fo-rths view showing the left side of his face. The essential features of the engraved portrait are high full forehead, the eyebrows heavy and straight, medium-sized eyes, nose prominent and straight, heavy mustache and full chin whiskers, side of face smooth, left ear shown and right ear hidden, and the hair shown thin on top of forehead. The words "trade mark," printed in small capitals, are shown, the former on the right and the latter on the left side of said engraved portrait.

This trade-mark the Dr. S. A. Richmond Nervine Company has used in its business since May 1, A. D. 1884.

The class of merchandise to which the trade-mark is appropriated is a proprietary medicine, and the particular description of goods upon which the company uses said trade-mark is a medicine for the relief of epileptic fits and all other nervous diseases. It is put up in eight-ounce flat glass bottles.

The company has been accustomed to have the said trade-mark, the portrait of Dr. S. A. Richmond, blown in on one of the flat sides of the glass bottles in which the medicine is bottled and sold; also printed on the paper cartoons or outside wrappers in which the

bottles containing said medicine are placed when wrapped and offered for sale.

[L. S.] THE DR. S. A. RICHMOND NERVINE COMPANY,
By M. J. DRANT, *Secretary.*

Witnesses:
HENRY C. CHRIST.
THEODORE FLETCHER.

Declaration.

STATE OF MISSOURI, } ss:
County of Buchanan, }

Personally appeared before me, the undersigned, a notary public within and for the county aforesaid, Michael Drant, who, being duly qualified, on his oath says that he is the secretary of and a stockholder in the Dr. S. A. Richmond Nervine Company, and that said company has a right to use the trade-mark described in the foregoing statement, and that no other person, firm, or corporation has the right to such use, either in the identical form or in any such near resemblance thereto as might be calculated to deceive, and that the description and fac-simile presented for record is a true copy of the trade-mark sought to be protected: that the facts set forth in the foregoing statement of the company's trade-mark are true, and that the said trade-mark is used by said company in commerce between the United States and Great Britain and the Dominion of Canada.

M. J. DRANT.

Subscribed and sworn to before me this 11th day of February, A. D. 1888.

[L. S.] EUGENE AYERS,
Notary Public for Buchanan Co., Mo.

(Indorsed:) Filed April 22, 1889. James T. Jones, clerk.

No. 16,405.

THE UNITED STATES OF AMERICA:

To all to whom these presents shall come:

This is to certify that by the records of the United States Patent Office it appears that Samuel A. Richmond, of Tuscola, Illinois, did, on the 18th day of February, 1889, deposit in said office for registration fac-similes of a certain trade-mark for a nervine, and the date of the receipt thereof was duly noted and recorded; that on the 18th day of February, 1889, he deposited therewith a statement and a written declaration under the oath of himself, the said Samuel A. Richmond, copies of all of which are hereto annexed; and the said applicant having made the payment of a fee of twenty-five dollars and complied with the regulations in such cases prescribed by the Commissioner of Patents and in all other respects complied with an act of Congress approved March 3, 1881, entitled "An act to authorize the registration of trade-marks and protect the same," the said fac-similes, statement, and declaration were duly recorded, and the said trade-mark has been duly registered in the said Patent Office this 19th day of March, one thousand eight hundred and eighty-nine, and protection therefor will remain in force for thirty years from said date unless sooner terminated in accordance with section 5 of said act.

In testimony whereof the seal of the Department of the Interior is hereby affixed this nineteenth day of March, 1889, and of the Independence of the United States the one hundred and thirteenth.

Given under my hand at Washington, D. C.

[L. S.]

BENTON J. HALL,
Commissioner of Patents.

UNITED STATES PATENT OFFICE.

SAMUEL A. RICHMOND, of Tuscola, Illinois.

Trade-mark for a Nervine.

Statement and declaration of trade-mark No. 16405, registered March 19, 1889.

Application filed February 18, 1889.

Statement.

To all whom it may concern:

Be it known that I, Samuel A. Richmond, a citizen of the United States of America, residing at Tuscola, in the county of Douglas and State of Illinois, and doing business at Tuscola, have adopted for my use a trade-mark for medical compounds, of which the following is a full, clear, and exact specification.

This trade-mark consists of a representation of four globes with or without the portrait of Dr. S. A. Richmond. These have generally been arranged as shown in the accompanying fac-simile, in which one globe appears at each corner and the portrait of Dr. S. A. Richmond in the center. The globes bear representations of the different portions of the earth's surface and the surrounding waters, and ships sailing to various countries, and they have printed around their circumference the words "Richmond's Improved Nervine, used all over the world;" but in place of the words "Richmond's Improved Nervine" the name of any other medical compound may be substituted. At the top, above the portrait and between the upper two globes, is a representation of a body of water in which are ships sailing to the various parts of the globe. Underneath the portrait are the words "The world is my field." Near the bottom and between the lower two globes are a fac-simile of the proprietor's signature, his title, "The people's medical servant," and his address, "Tuscola, Ill., U. S. A.," while at the extreme bottom are the words "Discoverer of Richmond's Nervine, the king of all remedies."

The style of lettering is unimportant, and the entire picture may be changed, and parts omitted and inserted at pleasure, without materially affecting the character of my trade-mark, the essential feature of which is the bust portrait of Dr. S. A. Richmond associated with the representation of four globes.

This trade-mark I have used continuously in my business since the year 1884.

The class of merchandise to which this trade-mark is appropriated is drugs and chemicals, and the particular description of the goods comprised in this class upon which I use the trade-mark is certain proprietary remedies prepared from recipes of which I am the sole

owner, especially nervine; but I contemplate using the same trade-mark with pills, liniment, salve, ague cure, hair-restorer, and other remedies manufactured by me.

It is my practice to apply my trade-mark to the bottles containing the medicine by means of suitable labels, on which it is printed; but it may be blown on the surface of the bottles, or it may be printed, stenciled, stamped, branded, or otherwise marked on boxes or other receptacles containing the medicine.

I also use the trade-mark in all legitimate modes of advertising the medicine.

In testimony whereof I affix my signature in presence of two witnesses.

SAMUEL A. RICHMOND.

Witnesses:
J. H. SIGGERS.
R. J. MARSHALL.

59

Office Supreme Court, U. S.
FILED.
APR 19 1895
JAMES H. McKENNEY,
CLERK.

In the Supreme Court of the United States.

OCTOBER TERM, 1894.

No. [redacted].

DR. S. A. RICHMOND NERVINE CO.,
Complainants,
vs.
SAMUEL A. RICHMOND,
Defendant.

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE SOUTHERN DISTRICT OF ILLINOIS.

(No. 14,897.)

BRIEF

OF

BENJAMIN BUTTERWORTH
AND
JULIAN C. DOWELL,
Attorneys for
Dr. S. A. Richmond Nervine Co.,
Appellant.

HUSTON & PARRISH,
St. Joseph, Mo.,
Of Counsel.

BYRON S. ADAMS, PR., 512 ELEVENTH ST.

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In the Supreme Court of the United States.

OCTOBER TERM, 1894.

No. 324.

DR. S. A. RICHMOND NERVINE CO.,
Complainants,
vs.
SAMUEL A. RICHMOND,
Defendant.

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE SOUTHERN DISTRICT OF ILLINOIS.

(No. 14,897.)

BRIEF.

MAY IT PLEASE THE COURT:

This cause comes to this Court on appeal from the Circuit Court of the Southern District of Illinois.

The action deals with the question of trade-marks and good-will of business: the sale and transfer of same and the rights and interests which pass by such sale, assignment and transfer. And in that connection with the rights, duties and obligations of joint stock corporations and their shareholders.

FIDUCIARY OBLIGATIONS AND TRUSTS.

The facts presented by the record disclose that Dr. S. A. Richmond, the appellee herein, was married to Eva E. Shannon in December, 1871.

That he was the inventor or originator of a formula for making a medicine, which he calls Samaritan Nervine, for the cure of epileptic fits and other nervous diseases.

Whether he ever studied medicine does not appear, but the medicine he prepared in accordance with his formula found favor with the sick and considerable quantities were sold.

In 1873 or '74, Dr. Richmond moved with his family to St. Joseph, Mo.

He had little or no property when he went to St. Joseph.

He at first tried the real estate business, but soon quit that and began to manufacture in his home in St. Joseph the medicine called Samaritan Nervine prepared according to the formula which he is said to have originated.

He designed and used as a trade-mark on his said medicine a device or picture of "A Man Falling in a Fit," and had the same duly registered at Washington in accordance with the statute in such case made and provided. This trade-mark was imprinted upon the wrappers which enclosed the five-ounce bottles in which said medicine was sold, and was used from the date of its adoption in 1873 or '74 continuously until a change in the size and character of the bottle and trade-mark was made in the spring of 1884, as hereinafter mentioned.

Dr. Richmond met with considerable success in the sale of his medicine and was reasonably prosperous until just prior to 1882, when he became financially embarassed and unable to pay his debts—in fact, he was insolvent. This was the result, as he says, of his engaging in a hotel venture in St. Joseph, which proved disastrous.

In the first part of 1882, say April, Dr. S. A. Richmond was the owner of the formulæ for making the Samaratin Nervine, the trade-mark of "a man falling in a fit," which was designed for and used exclusively in connection with said medicine, and the outfit or plant for mixing the medicine and the good-will of the business he had built up.

Eva E. Richmond, wife of the doctor, during his efforts to introduce his medicine and establish a business, received money from her father, Mr. Reese Shannon, and this money, together with the proceeds of some real estate given her by her father, she let the doctor have to create and establish his business and aid him in the prosecution thereof.

Dr. Richmond, about 1881, purchased a hotel in St. Joseph. The enterprise was a failure and as before stated he became insolvent, in 1881 or early in '82.

His hotel and property was sold but was not sufficient to pay his debts.

In May, 1882, there was organized under the laws of the State of Missouri a corporation under the name and style of the Dr. S. A. Richmond Medical Company, for the express purpose of manufacturing and selling the Samaritan Nervine and Nervine Pills.

The articles of incorporation are as follows:

521 (Copy.)

"EXHIBIT F F."

Be it known that we, James A. Richmond, of Douglas county, Illinois; John Albus, Jr., and Michael Draut, of the city of Saint Joseph, Buchanan county, Missouri, do by these presents form a body politic and corporate, pursuant to the provisions of chapter twenty-one (21) of the Revised Statutes of the State of Missouri and the several acts of the General Assembly amendatory thereof and supplementary thereto, and for that purpose we do hereby make the following certificate of facts:

First. The corporate name of said company is hereby certified to be "Dr. S. A. Richmond Medical Company."

Second. The corporation is to be located at the city of Saint Joseph, in the county of Buchanan and State of Missouri.

Third. The amount of the capital stock of said corporation shall be five thousand dollars ($5,000), divided into fifty (50) shares of the par value of one hundred dollars each, all of which has been *bona fide* subscribed, and the whole of which has been actually paid up in lawful money of the United States and is in the custody of the persons named as the first board of directors.

Fourth. The names and places of residences of the several stockholders and the number of shares subscribed by each are as follows, viz:

Names.	Places of residence.	Number of shares.
James A. Richmond.....	Douglas county, Illinois...	48, forty-eight.
John Albus, Jr	St. Joseph, Missouri.....	1, one.
Michael Draut.....	St. Joseph, Missouri.....	1, one.

522 Fifth. The number of the board of directors of said company shall be three and the names of those agreed upon for the first year are as follows, viz: James A. Richmond, John Albus, Jr., and Michael Draut.

Sixth. The corporation shall continue in existence for the term of fifty years.

Seventh. The purposes for which this company is formed is to manufacture and sell a medicinal compound known as Dr. S. A. Richmond's Samaritan nervine and such other medical compounds, chemical substances, or patent medicines as said corporation may from time to time deem expedient.

In testimony whereof we have hereunto subscribed our names and affixed our seals this 26th day of April, A. D. 1882.

JAMES A. RICHMOND. [SEAL.]
JOHN ALBUS, JR. [SEAL.]
MICHAEL J. DRAUT. [SEAL.]

STATE OF MISSOURI, } ss:
County of Buchanan, }

Be it remembered that on this 26th day of April, A. D. 1882, before me, the undersigned, a notary public within and for said county, personally came James A. Richmond, John Albus, Jr., and Michael Draut, who are personally known to me to be the same persons whose names are subscribed to the foregoing instrument of writing as parties thereto, and severally acknowledged that they executed the same for the uses and purposes therein mentioned.

In testimony whereof I have hereunto subscribed my name and affixed my seal, at my office, in the city of St. Joseph, the day and year last aforesaid.

JOHN F. TYLER, [SEAL.]
Notary Public.

My commission expires January 25, A. D. 1883.

The capital stock was five thousand dollars, divided into shares of one hundred dollars each.

The property and effects of Dr. S. A. Richmond, to wit, the formulæ or recipe for making the Samaritan Nervine and Pills; the right to manufacture said medicine; the trade-mark of "a man falling in a fit," and design connected therewith; the paraphernalia and outfit or plant for manufacturing said medicine, with the good-will of the business, was, by Dr. Richmond, assigned and transferred to the Dr. S. A. Richmond Medical Company, in consideration of five thousand dollars, the amount of the capital stock of said company.

The evidence is that to secure and protect Eva E. Richmond for the money she had contributed and the aid she had rendered in creating and establishing the Nervine business forty-seven shares of the stock of said medical company, were by mesne assignments through James A. Richmond, a brother of the doctor, on the 5th of May, 1884, assigned and transferred to her.

These shares she held until the company made an assignment for the benefit of its creditors, and was wound up or ceased to do business, as hereinafter stated. She never, in fact, parted with the stock, though the company ceased to do business.

After the medical company had been organized and purchased the property, rights and interests aforesaid Dr. Richmond entered its employ and became its general manager; he had charge of the business of the company, superintended the preparation of the medicine, attended to putting it up, purchased bottles, wrappers, and whatever was necessary in that behalf. He had charge of the advertising and sale, under the supervision of the board of directors, composed of three members.

Dr. Richmond was paid by the company for his services a salary of two hundred dollars a month, and in addition was allowed free of cost such medicine manufactured by the company as he needed to supply the patients he was personally treating.

Winslow Judson was a stockholder and a director, and also secretary of the company, and assisted in the conduct of the business.

Dr. Samuel A. Richmond subsequently became president and also acted as treasurer of the company.

——— West was the bookkeeper and accountant, and kept the books of account for the corporation.

The corporation advertised the Samaritan Nervine very extensively and at great expense as a specific for epileptic fits and other forms of nervous diseases. The company used the trade-mark, bottle and design of wrapper assigned to it by Dr. Richmond.

Debts were contracted by the corporation and obligations entered into which ultimately led to financial entanglements and finally resulted in an assignment by the cor-

poration for the benefit of its creditors, as hereinafter stated. But for a term, to wit, from the organization of said company in May, '82, until its assignment on the 13th May, '84, the business of the company had prospered and was profitable.

As stated, the company during the year '83 and up to the first of May, '84, used the same character of bottles, the same wrapper, trade-mark and device, that Dr. Richmond had used during all the years prior to the formation of the company, that is, a five-ounce bottle enclosed in a wrapper with a trade-mark of a man falling in a fit printed thereon, with the name of the locality St. Joseph, Mo., and some other words.

In November or December, 1883, Dr. S. A. Richmond as president, manager and agent of said company, recommended to the company that a change be made in the size of the bottles, and that new trade-marks be adopted; and he recommended in that behalf that the company adopt an eight-ounce panel bottle with a portrait of himself blown in the side of the bottle, with the words Samaritan Nervine and St. Joseph, Mo., and the words New Style, and that the new trade-marks consist of a portrait of Dr. S. A. Richmond, upon one side of the cartoon or caddy, and a portrait of Dr. Richmond surrounded by four globes or hemispheres stamped or engraved on the other side of the cartoon or caddy. Samples of each trade-mark are found in the brief.

This new style, as it was called, was adopted by the company and the president and manager, Dr. Richmond, had the bottles and trade-marks prepared.

He placed orders with the Kellogg Engraving Company, of Chicago, for engraving the new trade-marks, and early in 1884 ordered a large quantity of the eight-ounce bottles from Wm. McCulla & Co., of Pittsburg, to be made in accordance with the new style recommended to and adopted by

the company, and cartoons and caddies with the said trade-marks stamped or printed thereon were prepared in which the new style of bottles were to be encased.

Upon the adoption of this new style of bottle and trade-marks, a circular was prepared, by Dr. S. A. Richmond, for the company, and sent out notifying the customers of the company and the trade generally of the change made by the company in the size of the bottles and in the wrapper and trade-marks. Said circular describing fully and accurately the new bottles and the character of wrapper and trade-marks, and the caddy or cartoon in which said medicine would be encased from and after the *first day of May, 1884*, and the trade and public were notified by said circular, that medicine put up in any other form than that indicated in said circular, and designated as the new-style package, after the first of May, 1884, would not be genuine.

These circulars were sent broadcast to the trade in the United States and Canada.

The change was made; the eight-ounce bottles and caddies, or cartoons, with the trade-marks engraved or printed thereon, were ordered and purchased, as announced in said circular, and the Samaritan Nervine was, and has been ever since the first of May, 1884, put up only in the eight-ounce bottles, and enclosed only in the new form of wrappers, the new trade-marks thereon. The old-style, five-ounce bottle, and the old trade-mark, to wit, "a man falling in a fit," was discarded, except as to stock on the market which had been prepared prior to the change.

Afterwards, to wit, on or about the 13th of May, 1884, Dr. S. A. Richmond, who was still the president of the company and its business manager, called a special meeting of the board of directors. There were present at said meeting Dr. Samuel A. Richmond, and James A. Richmond, his brother; Winslow Judson, the other director, who is also

secretary of the company, was absent in New York on business of the company.

At said meeting, May 13th, 1884, Dr. Richmond, the president, announced that owing to certain claims being pressed, which the company could not pay, it was insolvent, and, in view of its insolvency, he recommended that the company make an assignment of all its property, effects and business for the benefit of its creditors under the statute of Missouri, which authorized and provided for such assignments, and for the administration thereof by the circuit court of the county of the domicile of the assigning insolvent.

Thereupon a resolution was adopted unanimously, ordering and directing the president, Dr. Samuel A. Richmond, to execute a deed of assignment of the property, effects, assets, and business of the company for the benefit of its creditors. (See R., p. 82–'3.)

(Copy.)

"EXHIBIT Z Z."

"*Assignment.*"

Richmond M. Co.
to
Tyler.

Whereas, "the Dr. S. A. Richmond Medical Company of St. Joseph, Mo., a corporation organized and doing business under the laws of the State of Missouri, is in embarrassed circumstances, and is unable to meet and pay its obligations, and whereas said corporation desires to prevent the accumulation of further indebtedness and to apply all its effects and assets to the payments of its creditors; and whereas at a meeting of the board of directors convened for that purpose on the 13th day of May, 1884—

The following resolution and order was unanimously and

passed by said board of directors on a call of the ayes & nayes, and duly entered of record, viz., "Resolved, That Dr. Dr. S. A. Richmond president of this company be and he is hereby authorized empowered and directed to make an assignment of the property and effects of this corporation to John F. Tyler for the benefit of the creditors of this corporation, under the procisions of the Revised Statutes of Missouri of 1879—

Therefore, this indenture witnesseth, that the Dr. S. A. Richmond Medical Company of St. Joseph Mo. as party of the first part for and in consideration of the premises, and the sum of one dollar in hand to it paid by John F. Tyler of St. Joseph Missouri party of the second part, the
582 the receipt whereof is hereby acknowledged, does hereby assign, bargain, sell and convey to the said John F. Tyler as assignee and in trust for the uses and purposes hereinafter stated, all and every of the deeds, chattels, effects, rights, credits, accounts, choses in action, and property of every kind and character belonging to the said "The Dr. S. A. Richmond Medical Company," including its office furniture and fixtures, advertising materials printed matter, circulars, electrotypes, medicine bottles and material on hands for the manufacture of medicine, and all and every article of property or right belonging to said company including whatever rights, it has or may have to mix compound manufacture or sell a certain medicine known as "Samaritan nervine."

To have and to hold the same and every part thereof to the said John F. Tyler as assignee, for the benefit of all the creditors of said party of the first part, under and in compliance with the provisions of chapter 5, of the Revised Statutes of Missouri of 1879, and for the sold use and benefit of all and every of said creditors in proportion to their respective lawful claim against said corporation.

In witness whereof the said "The Dr. S. A. Richmond Medical Company of St. Joseph Missouri" has by S. A. Richmond its president hereunto set its hand and affixed its seal and executed and delivered these presents.

[SEAL] THE DR. S. A. RICHMOND MEDICAL COMPANY,

By S. A. RICHMOND, *President.*

STATE OF MISSOURI, } ss:
Buchanan County, }

On this 13th day of May, A. D. 1884, before me appeared Dr. S. A. Richmond, to me personally known, who, being by me duly sworn, did say he is the president of the Dr. S. A. Richmond Medical Company of St. Joseph, Mo., and
583 that the seal affixed to said instrument is the corporate seal of said corporation, and that said instrument was signed and sealed in behalf of said corporation by authority of its board of directors, and said Dr. S. A. Richmond acknowledged said instrument to be the free act and deed of said corporation.

In testimony whereof I have hereunto set my hand and affixed my official seal the day and year as herein.

My term of office expires on the 11th day of April, 1886.

[SEAL.] JOHN A. READ,
Notary Public.

In the Matter of the Assignment of the DR. S. A. RICHMOND MEDICAL COMPANY.

To the circuit court of Buchanan county, Mo.:

S. A. Richmond, president and agent of the Dr. S. A. Richmond Medical Company, comes now and on his oath (he being first duly sworn) says that said company has this day made an assignment for the benefit of its creditors under the provisions of chapter 5 of the Revised Statutes of Missouri of 1879; that the estate assigned consists of the following generally:

Office and lab-ratory furniture and fixtures.
2 iron safes.
Lot wood engraving.
" electrotypes.
Medicine & materials on hand.
Printed matter & stationery.
Books and book accounts.
1 spring wagon.
Bottles, &c.
Cash, $25.

All of said property worth about $1,000 and not more.
584 The said company has, in New York, medicines in the hands of agents, but which are charged with the payment of claims of greater amounts than the value of such medicines.

S. A. RICHMOND.

Subscribed and sworn to before me this 13th day of May, 1884.

[SEAL.] JOHN A. READ,
Notary Public.

Filed for record May 13th, 1884, at 1 o'clock & 30 m. p. m.
THOMAS N. FINCH, *Recorder*,
By DAN'L T. LYSAGHT, *D. R.*

On the said 13th of May, 1884, the assignment was formally made by Dr. S. A. Richmond, as president, to John F. Tyler, an attorney of St. Joseph, and the deed delivered to the assignee, who thereby became vested with the title to and possessed of all the goods, chattels, rights, interests, formulæ for manufacturing the medicine, trade-mark, good-will of business, &c., of the assigning medical company, as trustee, for the benefit of the creditors of the Dr. S. A. Richmond Medical Company. (See R., p. 82–3.)

Whether said assignment was really necessary or proper, or in a moral sense, justifiable; whether it was a plan of Dr. Richmond to get possession and control of the company's assets, is a mooted question, but, however that may be, the assignment was regularly made and duly administered in said circuit court by the assignee.

The quality of the act of assignment may be indicated by the appraisement and sale that immediately took place.

Immediately after the assignment the assets were on the estimate placed on them by Dr. Richmond, appraised at *nine hundred and ninety-eight ($998) dollars.* (See Dep. of John F. Tyler, assignee, pp. 81–'4.)

Immediately thereafter, on, to wit, the 16th of May, 1884, said property and assets were in form, sold to one C. W. Wolverton, of Tuscolo, Illinois, who was the attorney of James A. Richmond; for the sum of *one thousand ($1,000) dollars*, being two (82) dollars more than the appraisement.

Wolverton promptly assigned whatever interest he took by said purchase to one Powell, to whom the assignee refused to deliver the assets, having discovered the fraud, and Powell sued out a writ of replevin, and so got possession of such corporeal property as the officer holding the writ could take and deliver.

Dr. S. A. Richmond says that after the purchase by Powell from Wolverton he, Dr. Richmond, *leased said property and effects*, including the trade-mark of a man falling in a fit, and removed the same to Chicago, and there began to make and vend the Samaritan Nervine, he claiming the right to do so *by virtue of said lease*, but he states that it was without the consent of the medical company or the shareholders thereof. (See R., p. 137.)

We know that Dr. Richmond went to Chicago in July 1884, and that he began to manufacture the Samaritan Nervine, and to use the bottles and trade-marks that had been adopted and procured by the S. A. Richmond Medical Company before the assignment, and also to use the good will of the business of said company.

As soon as the fact of the sale of the property and effects in the hands of the assignee for $1,000 became known to creditors, they immediately on, to wit, May 30, 1884, filed a petition or motion in the Circuit Court of Buchanan County, Mo., having jurisdiction in that behalf, to set aside said sale to Wolverton on the ground that it was fraudulent and void, as against creditors, and the court on hearing the evidence did on June 23, 1884, decide that the sale was fraudulent and void, and set it aside, and ordered that the

property assigned and transferred to the assignee, Tyler, by the Medical Company be sold to pay the creditors.

The assignee thereupon again offered said property for sale, and on the 28th of August, 1884, James A. Richmond purchased it for $25,000, and on the 11th of November 1884 the said sale to James A. Richmond was confirmed by the Circuit Court, and all the property, rights and assets, including each and every interest, right, privilege and species of property the Dr. S. A. Richmond Medical Company had owned and assigned to John F. Tyler, assignee, was delivered to James A. Richmond.

The following is a copy of the transfer to James A. Richmond:

(Copy.)

"EXHIBIT 1"

Whereas, on the 11th day of August, A. D. 1884, in pursuance of an order of the circuit court of Buchanan county, Missouri, made in vacation, rendered in the matter of the assignment of the Dr. S. A. Richmond Medical Company, I sold to James A. Richmond, of the county of Douglas and State of Illinois, in consideration of the sum of twenty-five thousand dollars all the right, title, interest, and claim I have as assignee in and to the formula or receipt for the manufacture and compounding of what is known as Dr. S. A. Richmond's Samaritan nervine and nervine pills and the right to manufacture and vend the same; also the trademark heretofore used by said medical company in its business;

And whereas I reported to the court said sale and the same has been approved and confirmed:

Therefore, in consideration of the premises and said sum of twenty-five thousand dollars, I hereby transfer, assign and convey to the said James A. Richmond all the right and title which as said assignee I have in and to the right, title, interest in the formula or receipt for the manufacture and compounding of what is known as Dr. S. A. Richmond's Samaritan nervine and nervine pills and the right to manu-

facture and vend the same; also the trade-mark heretofore used by said medical company.

In testimony whereof I have hereunto set my hand and seal this the 11th day of December, A. D. 1884.

JOHN F. TYLER, *Assignee.* [SEAL.]

James A. Richmond paid $2,500 cash on said purchase and gave security for the payment of the balance, to wit, $22,500.

As stated Dr. S. A. Richmond with some of the property he said he leased from Powell as aforesaid, went to Chicago in July, '84, and opened an office and began business, putting up and selling Samaritan Nervine, and, as stated, using the new style of bottles, wrapper and trade-marks adopted by the medical company as hereinbefore mentioned.

He did this without the knowledge or consent of the medical company or of the stockholders of said company.

Dr. Richmond being a party to the fraudulent appraisement and sale to C. W. Wolverton, a transaction which bears the impress of having been contrived for the benefit of Dr. Richmond, in that the property worth $25,000 was sold for $1,000, and immediately found its way into Dr. Richmond's hands could derive no benefit from said sale, and could take nothing under his lease, as against creditors or the stockholders of the medical company, if, in fact, he had a lease; nor could his lessor, Powell, take anything by reason of the fraudulent and void purchase to which he was, it seems, a party.

A successful effort was made by and on behalf of Mrs. Eva E. Richmond and others to purchase the interests and rights that had been purchased by James A. Richmond of John F. Tyler, the assignee.

The assets in the hands of the assignee and a lot of the Nervine medicine subsequently furnished by the Dr. S. A. Rich-

mond Nervine Company, the appellant herein, were used to settle with and pay the assignee and creditors the amount due from James A. Richmond, being the balance of the purchase price, to wit, $22,500, and thereupon the assignee cancelled or surrendered and released the security and indebtedness of James A. Richmond for said balance, and James A. Richmond, in consideration of being relieved of said indebtedness, and the payment to him of the sum of two or three thousand dollars, by the *Dr. S. A. Richmond Nervine Company*, assigned and transferred to the said *Nervine Company*, all the rights, property, interests and effects, trade-mark and good-will of business held by him in virtue of his purchase from said assignee.

The Dr. S. A. Richmond Nervine Company was organized on or about the 10th of December, 1884.

The capital stock of the S. A. Richmond Nervine Company was, and is, $2,000, divided into shares of $100 each.

Of this stock, Eva E. Richmond, who held forty-seven shares out of the fifty in the old medical company, received seventeen shares in the Dr. S. A. Richmond Nervine Company. Her holding of stock was afterwards reduced to fourteen, which she still owns and holds.

James A. Richmond holds four shares, and Michael Drought, the secretary of said company, owns one share, and some other party one share.

On the organization of this S. A. Richmond Nervine Company, which was completed on or about the tenth of December, 1884, James A. Richmond, as before stated, sold, assigned, and transferred all the property and interest he had acquired by virtue of his purchase from the assignee of the medical company, including the formula for making the Samaritan Nervine and the exclusive right to manufacture it, the trade-marks, and other property, effects, and good-will of the business. (See R., pp. 75–'6.)

The following is a copy of the proceedings of the meeting of the directors at which said sale and transfer was effected:

524 "EXHIBIT G G."

ST. JOSEPH, MO., *December 11th, 1884.*

The directors and incorporators *the* the Dr. S. A. Richmond Nervine Company, namely, James A. Richmond, Michael Draut, and John Christ, met this day at the office of J. W. Strong, No. 404 Francis St., St. Joseph, Mo.; and on motion, James A. Richmond was called to the chair and Michael Draut was appointed secretary.

On motion, James A. Richmond was unanimously elected president of this company and its board of directors.

On motion, Michael Draut was unanimously elected secretary of this company and its board of directors.

On motion of John Christ, the following was adopted as the seal of the company:

[SEAL.]

The following resolution was offered by John Christ and unanimously adopted:

Be it resolved, That Dr. S. A. Richmond be elected treasurer and general manager of the Dr. S. A. Richmond Nervine Company, and shall receive as a salary for his services the sum of $200.00 per month, to be paid monthly, and shall have power, together with the president of said company, to make and execute in the name of the company all necessary contracts for the carrying on the business for which the company is organized.

The following proposition was then received from James A. Richmond:

To the Dr. S. A. Richmond Nervine Company:

525 I hereby propose to sell and assign to the Dr. S. A. Richmond Nervine Company, in consideration of the sum of two thousand dollars, all my right, title, and interest in and to the formula or receipt for the manufacture

and compounding of what is known as the Dr. S. A. Richmond Samaritan nervine and nervine pills and the right to manufacture and vend the same; also the trade-mark heretofore used by the Dr. S. A. Richmond Medical Company in its business, and also all my right, title, and interest in and to all of the articles of personal property enumerated and described in the circuit court of Buchanan county, Missouri, by John F. Tyler as assignee of the Dr. S. A. Richmond Medical Company, and also all my right, title, and interest in and to the foregoing rights and personal property which I have acquired through and by an assignment made to me by A. B. Powell, assignee of one Wolverton.

JAMES A. RICHMOND.

The following whereas and resolution was offered by John Christ and unanimously adopted:

Whereas James A. Richmond has made a proposition in writing to the Dr. S. A. Richmond Nervine Company, in consideration of the sum of two thousand dollars, to transfer, sell, and assign to said company all of his right, title, and interest in and to the formula or receipt for the manufacture and compounding of what is known as the Dr. S. A. Richmond Samaritan nervine and nervine pills and the right to manufacture and vend the same; also the trade-mark heretofore used by the Dr. S. A. Richmond Medical Company in its business, and also all of his right, title, and interest in and to all of the articles of personal property enumerated
and described in a certain inventory filed in the cir-
526 cuit court of Buchanan county, Missouri, by John F.
Tyler as assignee of the Dr. S. A. Richmond Medical Company, and also all of his right, title, and interest in and to the foregoing rights and personal property which he had acquired through and by an assignment made him by A. B. Powell, assignee of one C. W. Wolverton:

Therefore be it resolved, That the said offer of the said James A. Richmond be received and accepted and the treasurer of the said Dr. S. A. Richmond Nervine Company pay to the said James A. Richmond therefor the sum of two thousand dollars upon the execution of said transfer.

To the president and board of directors of the Dr. S. A. Richmond Nervine Company.

GENTLEMEN: I have the honor to report that James A. Richmond has fully complied with the proposition *be* formerly made to the Dr. S. A. Richmond Nervine Company to transfer, sell, and assign to said company the rights and personal property contained and described in his said proposition and in writing has assigned and transferred said rights and personal property, which assignment I herewith submit, and that in pursuance of a resolution of the board of directors of said company heretofore adopted upon the execution and delivery of said assignment I did pay him the sum of two thousand dollars out of the fund of said company.

DR. S. A. RICHMOND,
General Manager & Treas.

John Christ introduced the following resolution, which was unanimously adopted:

Be it resolved, That in addition to the compensation already provided for the services to Dr. S. A. Rich-
527 mond as general manager and treasurer of the Dr. S. A. Richmond Nervine Company *to* be allowed free of charge whatever amount of the medicine manufactured by said company *as* he may require to supply his patients.

On motion, the board adjourned subject to the call of the president.

MICHAEL DRAUT, *Sec'y.*

In order that no question might arise as to the title of the Nervine Company to any of said property and rights, an assignment was obtained from *Powell* through James A. Richmond, of any and all right, title and interest he had acquired or claimed to have acquired, by reason of the sale of the assignee, Tyler, to Wolverton, under whom he, Powell, claimed. (See R., p. 76.)

The Dr. S. A. Richmond Nervine Company thus became and was on *December 12th, 1884*, the sole and exclusive owners of every vestige and trace of right and title of, in

and to all the property effects, interests and rights formerly held and owned by the Dr. S. A. Richmond Medical Company and by it assigned to John F. Tyler for the benefit of the creditors; and the said Nervine Company thus acquired the sole and exclusive right to manufacture and sell the Richmond Samaritan Nervine medicine, and the exclusive right to use the trade-mark, bottles and wrappers which had become identified with and used solely on said medicine, and which were owned by the assigning medical company, and became and was, the thing of value sold by the assignee and subsequently acquired by the Nervine company.

Dr. Richmond was paid by the company an agreed salary of $200 per month and allowed free of cost or expense to him such medicines manufactured by the company as he might need in treating his patients, amounting in all, according to the testimony of the secretary, to about four hundred or four hundred and fifty dollars per month.

The company carried on business successfully, using only the new style bottles and several trade-marks adopted and procured by the Medical Company before its assignment and until this litigation injured, if it has not destroyed, its business.

The company contracted debts and liabilities, many of which remain unpaid and are still subsisting liabilities.

In January, 1886, after the company had been doing business for about two years, as aforesaid, Dr. Richmond ceased his connection with it. He got into trouble in the early part of that year, 1886, which culminated, on June 16th, by his shooting and killing his attorney, Col. James W. Strong, of St. Joseph, Mo.

The doctor was arrested for the killing, indicted, tried, and acquitted on the ground that he was insane when he did the shooting. He was sent from the court to the insane

asylum, near St. Joseph, Mo., where he remained for some fourteen months.

He left the asylum in *November, 1887*, but did not receive *his formal discharge for sometime thereafter.* (See R., p. 148.)

During the time Doctor Richmond was in the asylum Eva E. Richmond, as principal owner and president of the Dr. S. A. Richmond Nervine Company, took charge of the business and successfully conducted its affairs from that time until enjoined by the court below in this action. (See R., p. 148.)

She is still the president and principal stockholder of said company.

The Doctor, in 1886, left his family, wife, and six children.

Opinions differ as to whether his conduct was due to mental disturbance or moral obliquity, or a touch of both. At all events he did not, after he left the asylum, return to his home and family, but went to Tuscalo, Illinois, and began the manufacture of the Samaritan Nervine as he had done in Chicago, using the trade-marks, bottles, wrappers, and good-will of the business of the Dr. S. A. Richmond Nervine Company, and without its knowledge or consent, he claiming that everything was his own, in equity at least.

He also tried to have registered, and as a result of the remarkable decree entered by the court below in this case, did have registered as his own, the trade-mark of the Nervine Company, consisting of the portrait of Dr. Richmond surrounded by four globes or hemispheres, and known as the four-globed trade-mark.

The Doctor was notified by the company to cease manufacturing said medicine and using said trade-mark. He persisted, however, and thereupon the Nervine Company, the appellant in this Court, filed a bill against him, praying an injunction and an accounting.

The bill of complaint set out the facts substantially as

hereinbefore stated, and asked that Dr. Richmond be enjoined from using the trade-marks, formulæ, property and good-will of the business belonging to said corporation, without its consent, and asked for general relief in that behalf.

Dr. Richmond, the appellee herein, filed an answer and also a cross-bill, and an amended cross-bill; he in effect denied that the complainant company owned or had ever owned the trade-marks in question, or any of the interests claimed by it, or that it had ever used, or had the right to use, the eight-ounce bottle or any trade-marks in connection therewith, except as his own personal property, and by his permission, and subject to his right to terminate said use.

He averred and testifies that the trade-marks and good-will of the business were and are his own; that he only leased them to the complainant company.

He denied that Eva E. Richmond has or ever had any interest whatever in the stock of the old or new company; that whatever stock she held was his, and that she held it only as trustee for him and not otherwise.

That in effect both companies were his and that *he* owned all and whatever the *company* owned.

That in fact the companies were organized for his convenience and as a mere matter of form; that all the shares of stock issued by each company, to whomsoever issued and by whomsoever held, was held in trust, solely for his use and benefit and not otherwise; the said stockholders having no interest whatever therein; in effect that the said corporation had and have no rights or interests that he was or is bound to respect.

He avers, and so testifies, that Eva E. Richmond never furnished him any money or property, or in anywise became the owner or in anywise entitled to or interested in the shares of stock held by her, but that the stock she held and holds is held by her solely as a trustee for his, Dr. S. A.

Richmond's, sole use and behoof, she, the said Eva, having no interest whatever as owner or otherwise therein.

He further says that all that was done in the matter of the organization of said corporations, and the conduct of the business by them, was for him and on his account, and at his request, and for his sole use and benefit, and was a mere matter of form and in effect, that he could lawfully at his pleasure, and as he pleased, take and use as his own and to the exclusion of said companies all the property they owned or pretended to own, without their leave, and in defiance of their protests, since, as he avers and testifies, they were in equity his own.

And he asked that the court may so find and decree, and that the said Dr. S. A. Richmond is the sole and exclusive owner of the said property and interests, trade-marks and good-will of the business, and that the complainant corporation, to wit, the appellant, are infringing his rights and that said company may be wholly enjoined from manufacturing and selling said medicine and using said bottles and trade-marks in conducting said business.

And the court below granted Dr. Richmond, the appellee, the relief he asked, omitting nothing, but enjoined the said Nervine Company from using what is manifestly its own property and from enjoying its acquired rights.

From that finding and decree the complainant appealed to this Court.

There is a conflict of evidence. The radical claims of Dr. Richmond are controverted by Eva E. Richmond and the other parties and stockholdors in interest, and are disproved, as we maintain, not only by the evidence of other witnesses, but by the evidence of Dr. Richmond himself and that of his brother James, who is his *alter ego*, and by their whole course of conduct prior to the beginning of the trouble which culminated in this suit.

The first question is, what did Dr. S. A. Richmond own on May 1, 1882, the date of the organization of the Dr. S. A. Richmond *Medical* Co. and what did he sell and assign to said company.

(*a.*) Said company was organized May 1, 1882, with the aid of Dr. S. A. Richmond, for the express purpose of manufacturing and selling the Dr. S. A. Richmond Samaritan Nervine and Nervine Pills, in other words, to succeed to the ownership of the business theretofore carried on in St. Joseph, Mo., by Dr. S. A. Richmond.

(*b.*) Dr. Richmond at the date of the organization of said company was admittedly the sole and exclusive owner of the formulæ or recipe for manufacturing said medicine, *i. e.* the Samaritan Nervine and Nervine Pills.

(*c.*) He was the sole owner of a trade-mark originated and designed by him for use on said medicine. It was never used in connection with any other merchandise, and was inseparably identified with the Samaritan Nervine. It represented and stood for the good-will of the business as far as any trade-mark can. It is referred to in this suit as the trade-mark of "a man falling in a fit." A fac-simile of said trade-mark is found in the record and is attached to this brief.

(*d.*) Dr. S. A. Richmond at the date of the organization of said company was manufacturing and selling said medicines; he was the exclusive owner of the good-will of the business; the plant and paraphernalia for conducting the business at St. Joseph, Mo., the only place it was carried on.

(*e.*) Confessedly the Dr. S. A. Richmond Medical Company was organized to purchase, own, and carry on that identical business and Dr. S. A. Richmond on the organization of said company, May 1, 1882, sold, assigned and transferred to the company all his right and title to and in property, rights, interests, formulæ for making said medicine, the right to

make it, the trade-mark and good-will of the business, as theretofore conducted by him in consideration of $5,000 the amount of the capital stock of said company.

(*f.*) Michael Draut subscribed, paid for, took and held one share; John Albus subscribed and paid for one share; James A. Richmond subscribed for forty-eight shares, and subsequently, on May 5th, assigned and transferred forty-seven of said shares to Eva E. Richmond, the wife of Dr. Samuel A. Richmond.

(A copy of the articles of incorporation appear elsewhere in this brief.)

(*g.*) Dr. Richmond was employed by said company as business manager, to conduct its business, prepare and put up the medicines, purchase bottles, wrappers, &c., &c., and look after the advertising, sales, &c., being paid therefor a salary of $200 per month, and being allowed out of the medicine manufactured by the company, free of cost, whatever he needed for the patients he was treating.

What did the company acquire from Dr. S. A. Richmond?

(1.) Obviously it acquired whatever and all the property and rights of every character and description he had prior to the sale and transfer to the company. In other words, all the Doctor had of the property and business of manufacturing and selling Dr. S. A. Richmond's Samaritan Nervine, &c., and all the rights and interest he had in and about the business, vested in the Dr. S. A. Richmond Medical Company.

It goes without saying that the title to the property and rights thus transferred to and vested in the Dr. S. A. Richmond Medical Company could only be divested by the act of the company itself or by due process of law.

It also goes without saying that the right of the legal or equitable owners of stock in a company must be asserted

through the corporation itself. And a stockholder has no more right to take, use, and appropriate the property and interests of the corporation against its right and against its protest than a stranger.

Dr. S. A. Richmond claims, in effect, that by a kind of mental reservation, property and rights he transferred to Dr. S. A. Richmond Medical Company only vested title in the company to the extent and in the manner deemed by him useful and necessary to conserve his use and purpose; and

That he was in fact the tangible, living embodiment of the company;

That it existed only in, by, and through him;

That for the purpose of eluding *his* creditors it had a potential existence, which, however, *merged in him* the moment he made up his mind to take from his wife and other shareholders the stock in the company held and owned by her and them.

But this we submit is not reconcilable with good law or good morals.

About the following facts restated, there is no dispute:

1st. The Dr. S. A. Richmond Medical Company organized as aforesaid, received the property, effects, rights and interests of Dr. Richmond, as stated, and proceeded as a corporation to conduct the business for which it was organized.

That Dr. S. A. Richmond became its general manager, and in connection with the board of directors conducted its business; that said company manufactured medicines and sold the same throughout the United States and Canada; that it contracted debts; that it paid Dr. Richmond a salary for his service, to wit, $200 a month, and gave his medicines free of charge for his patients.

That Eva E. Richmond and others were stockholders in said company.

That in November or December preceding the assignment by the company for the benefit of its creditors, in May following, Dr. S. A. Richmond as business manager and agent charged with the duty in that behalf proposed and recommended to the company a change in the size and style of the bottle in which said medicines were to be put up, and he designed new trade-marks to be used in connection therewith, and that his recommendations in that behalf were adopted by the company, and the new-style bottles and new trade-marks and wrappers designed by Dr. Richmond were ordered by him as officer and agent of the company and the orders partly filled and payments on account thereof were made by the company. (See evidence of Drout West and the receipted bills presented to and paid by the company, pages 64, 65, 66, 67 and 70 of record.)

It is certain that by reason of alleged liabilities incurred under contracts for advertising made by Dr, Richmond for the company it became embarrassed, and Dr. Richmond called the board of directors together on the 13th of May, 1884, and announced that the company was insolvent and recommended that it make an assignment for the benefit of its creditors, and upon his recommendation and vote and that of his fellow-director and brother, James A. Richmond, an assignment was made to John F. Tyler, of St. Joseph, for the benefit of the creditors of the Dr. S. A. Richmond Medical Company; that said assignment covered all the property, effects, rights and interest of every kind, character and description of said company and vested the same in the assignees, John F. Tyler, for the benefit of creditors. (See record of assignment, pages 8 and 9 and evidence of James A. Richmond and Samuel A. Richmond before referred to.

Nor is it doubted that Samuel A. Richmond was influential in securing an appraisement of all said property, rights, interest and effects at $998 (see appraisement before cited)

and that immediately thereafter, on the 16th of May, C. W. Wolverton, who was the attorney for James A. Richmond, purchased the entire property in the hands and control of the assignee, *for $1,000*, and immediately turned said property and assets over to one Powell, who at once attempted to dispose of it or in some fashion turn it over to *Dr. S. A. Richmond*, who took whatever of odds and ends he received from Powell and went to Chicago.

Nor is there any doubt that the Circuit Court of Buchanan County, Missouri, having jurisdiction in that behalf, on application of a creditor, set aside and declared fraudulent and void said sale, and directed that the property be sold, and that thereafter it was sold and purchased by James A. Richmond, not for *$1,000*, but for *$25,000*, he paying $2,500 in cash on account of said purchase and securing the balance by mortgage on real estate.

The stockholders of the Dr. S. A. Richmond Medical Company, using the assets of said company in the hands of the assignee, made a settlement or adjustment and thereby paid the assignee the indebtedness of James A. Richmond, and thereupon *he*, the said James A. Richmond, transferred all the interest of every character and description purchased by him of the assignee of the Medical Company to the Dr. S. A. Richmond *Nervine* Company, which had incorporated under the laws of the State of Missouri for the express purpose of purchasing the property and rights of James A. Richmond and manufacturing and selling the Samaritan Nervine and pills.

It is certain that whatever right or title Mr. Wolverton acquired by virtue of the sale to him (which was afterwards set aside as in fraud of creditors) and which was by him assigned to one Powell, was through James A. Richmond assigned and transferred to the Dr. S. A. Richmond Nervine Company; so that,

All the right, title and interest of ever character and description which the said Dr. S. A. Richmond Medical Company owned and assigned, or claimed, and had a right to claim, became vested in the Dr. S. A. Richmond Nervine Company, the appellant in this case, on or about the 11th day of December, 1884.

It is not questioned that the stock in said Nervine Company was vested in the several stockholders; that Eva E. Richmond owns and holds fourteen shares of the stock of said company, and the other shares are held by different parties.

Nor is there any question but that the Dr. S. A. Richmond *Nervine* Company acquired the title to and took possession of said assets, rights and interest, and conducted the business of manufacturing and selling said medicine, from the 11th day of December, 1884, until enjoined in this proceeding in 1891; that the company put up said medicine only in eight-ounce bottles designed by said Dr. S. A. Richmond for the old Medical Company while he was a director, president and business manager of that company, and that the said Nervine Company used only the wrappers and trade-marks and caddies devised for and adopted and obtained by the old Medical Company, and the formula, the good-will of the business acquired by mesne assignments from that company, as hereinbefore pointed out.

Nor is it denied that the said Dr. S. A. Richmond entered the employ of the said Nervine Company as an officer and business manager, mixing its medicines and superintending the sale thereof, conducting its advertising, &c., and receiving as his compensation therefor $200 a month and medicines for his patients free of cost.

Nor is there any question that he was then living with his family, consisting of a wife and six children; that he continued with his family, and remained in the employ of

said company as its business manager and agent until in 1886, when he left the service of the company, and also left his family, and was thought to have drowned himself.

He became involved in trouble which culminated on the 16th of June of that year in his shooting and killing Col. Strong, one of his attorneys.

Finally, there certainly would seem to be no question that all the rights and interests owned by Dr. Richmond prior to the organization of the Richmond *Medical* Company and by him assigned on May 1, 1882, to said company, and subsequently by said company, on May 13, 1884, assigned to John F. Tyler for the benefit of the creditors of said company and by said assignee subsequently sold to James A. Richmond and by him subsequently, on December 11, 1884, sold, assigned and transferred to the Dr. S. A. Richmond Nervine Company, became absolutely and to all intents and purposes the property of said corporation.

And right here the question is raised, and it is a pivotal question in this case; upon its determination the correctness or absurdity of the finding below hinges.

Dr. Richmond claims, as stated, that both companies were mere matters of convenience for him; that the consideration upon which the issue of stock was based was furnished by him; and that the stockholders, his wife Mrs. Eva E. Richmond, and others, held said stock for his sole use and benefit; they having no interest whatever therein, but being mere trustees for his benefit.

In other words, that Dr. Richmond and these companies were in fact and in law for all the Doctor's purposes one, and *he* that *one*, and it seems the character of the corporate agency depended upon the use he desired to make of it.

If all the Doctor, the appellee herein, claims as to the stock of said company being held in trust for him was as true as it is untrue, the legal proposition contended for would be untenable and wholly indefensible in law and morals.

So far as the legal questions raised by the facts stated are concerned, we submit that whatever rights Dr. Samuel A. Richmond may have or claim to have in the property owned and held by that corporation by reason of his alleged equitable ownership of stock in said corporations, they must be worked out through the corporation itself, and that his rights must be asserted with reference to the rights of shareholders and creditors of said corporations; and it is anomalous to contend that Dr. Richmond, by reason of his alleged equitable ownership of the stock held (and undoubtedly owned) by his wife or late wife, he can, at his will and pleasure and in defiance of the claims and protests of the corporation, take unto himself and appropriate to his sole use and benefit the property rights and franchises vested in and belonging to the corporation, thereby breaking up its business.

On the contrary, Samuel A. Richmond, as an individual, had and has no more right in law to manufacture said medicine and use the trade-marks and good-will of the company, and take its business, without its consent and over its protest, than if he had been an utter stranger. This proposition would seem to be too clear and obvious to need discussion.

Yet this is not only the logic, but the effect of the decree below.

I repeat, that if Dr. Richmond's assertions had been true, as they are not, he was not entitled to the decree; that the decree entered by the Court was utterly erroneous.

On the theory that the Court will listen to the assertion of Dr. Richmond in this case, that the sale and assignment to the corporation was a mere sham and pretense for his own use and purpose, I will scan the evidence to learn *when* it was that he first found out that it was a mere form, a sham and pretense.

And when it was first disclosed by his acts that he had discovered that the Dr. S. A. Richmond Medical Company had no interest in the trade-marks of the "portrait of Dr. Richmond," and of his "four-globe portrait," as it is called, and the new eight-ounce bottle, with his portrait blown in the side.

It is not questioned that the new form of bottle and these new trade-marks were originated and designed by Dr. Richmond in November or December, 1883. Dr. Richmond says so himself and the record discloses that this is the fact.

He also states, as do the other witnesses, that a circular was issued in pursuance of the adoption of this change in the character of bottle and trade-mark, notifying the customers and the public of said intended change, and indicating just what it would be.

That the change would be from the old five-ounce bottle to the eight-ounce bottle, and from the old trade-mark on the wrapper of "a man falling in a fit," to the so-called "portrait trade-mark" and the "four globe trade-mark," and stating that the change would take place on the 1st of May, 1884, and that after that no goods put up or shipped without being in said eight-ounce bottles, and encased in cartoons or caddies with the portrait, and the four-globe trade-mark, stamped or printed thereon, *would be genuine.*

And it is equally certain, that in pursuance of this Dr. Richmond ordered the engravings for printing the trade-marks, and ordered eight-ounce bottles of the character and description required, and also took the engravings of the trade-marks and had wrappers, cartoons and circulars printed and *always* for the *Dr. S. A. Richmond Medical Company, of St. Joseph, Missouri.*

No other name was used, no other place designated, even if he could legally have done so.

And further, the bills for this work, as shown by the books

of the company, and testified by the book-keeper and secretary, were paid by the company.

Beyond this, it is incontestibly proven that the medicine was prepared and put up in the eight-ounce bottles, and everything done in conformity with the proposed change, so that the change in bottle and trade-marks that was announced to the customers, the trade and the public, took place.

But Dr. S. A. Richmond now says that *he* never contemplated permitting the company to use *his trade-mark*, and that none of these steps were taken for or on account of the company.

This is manifestly absurd because he himself testifies that these changes were made with reference to the manufacture and sale of the Samaritan Nervine, and it is already clear that Dr. Richmond had sold and transferred to the Dr. S. A. Richmond Medical Company all his right, title to, and interest in the formula and right to manufacture said medicine, and had transferred to said company his trade-mark and the good-will of the business, and everything connected therewith, and the new style of bottle and trade-marks were to supersede the old *in that business* and it was so announced and so done.

And Dr. Richmond's effort after the trouble with his wife and the company to make it appear otherwise, cannot succeed.

True, Dr. S. A. Richmond and James both testify that the *Dr.* said to James as early as December, 1883, that he intended to withdraw from the company and manufacture medicine on his own account; that he intended to get out these trade-marks and pay for them out of his own *private funds*, and told, so James says, as early as December, 1883, just what they would be, describing the bottle and the trade-marks, &c.

But this statement is utterly absurd and obviously a

make-shift, because utterly inconsistent and irreconcilable with Dr. Richmond's whole course of conduct, the rights of the company and with the known and admitted facts in the case.

First. He has sworn earnestly that the Dr. S. A. Richmond Medical Company was his own; that he owned it all. If that was true there was no good reason why he should have talked about withdrawing and paying with his own funds, as contradistinguished from the funds of the company.

Beyond that, if that was not so, as, indeed, it was not, he would have had no right to engage in the business of manufacturing and selling the Samaritan Nervine, the exclusive right to do which he had sold and assigned to the company, unless he has secured the consent of the company to so.

But this was all an after-thought with the Dr.

It is clearly established that this change was made *for the company* and *by the company*, and on the recommendation of Dr. S. A. Richmond himself, before an assignment was thought of, and before he had any occasion to try to deprive his wife and family of the stock held by her, or of repossessing himself by any means of the rights and interests assigned and transferred to the company.

So it seems to be clear that on the 13th day of May, 1884, the Dr. S. A. Richmond Medical Company owned the property, rights and interests heretofore mentioned as having been assigned to it by Dr. Richmond and also the new trade-marks, consisting of the portrait of Dr. Richmond, and the four-globe portrait of the Dr., as used on the caddies and bottles in which the medicine was put up and sold.

It is shown by the testimony of Eva E. Richmond (P. R., p. 147) and by that of Edwin E. Pratt (p. 59), and John F.

Tyler (pp. 70–71), and Michael Draut and John F. Crist (p. 72), and by W. K. James, attorney-at-law (p. 73), that in the close of '81 and '82 Samuel A. Richmond was bankrupt; that judgments were obtained against him and they were worthless.

Eva E. Richmond mentions the sums of money she received from her father and advanced to create and establish the business.

In May, 1882, Dr. Richmond was insolvent and had nothing except what, on the 1st of May, '82, he assigned to the Dr. S. A. Richmond Medical Company, which was organized to purchase his assets and business and manufacture and sell his medicine.

Dr. Richmond testified in the suits before the court, at Columbus, Ohio, that the stock which was transferred to Eva E. Richmond was given to her in consideration of the money she had provided and the aid rendered in creating and building up the business, and all the witnesses above named testify that Dr. Richmond had always so said and maintained.

Henry M. Butler, attorney, of Columbus, Ohio, and John F. Tyler, who was Dr. Richmond's attorney, testify that Dr. Richmond not only did not claim any interest in the stock held by Eva E. Richmond, but swore, when his deposition was taken in cases pending at Columbus, Ohio, that the stock was the property of Eva E. Richmond, and in 1882 he had no interest in it. And Tyler says further, as does Secretary Draut, secretary of the Nervine Company, that they never heard it claimed or asserted that the stock held by Eva E. Richmond was owned or claimed by Dr. S. A. Richmond. Tyler, who was Dr. Richmond's attorney, said it was always spoken of and treated as the property of Eva E. Richmond; nor does it appear that the Dr. ever made any other claim while he was with his family, and not until

after they were deserted by him was this alleged equitable ownership of the stock made or heard of.

This alleged equitable ownership by Dr. Richmond of all the stock, property, and effects of both corporations was an after-thought. This is shown by the testimony of both Dr. Samuel A. Richmond and James A. Richmond, his brother, who swore in perfect harmony, and by all the other witnesses who had personal knowledge of the facts.

As to rights and interests transferred to and owned by the Dr. S. A. Richmond *Medical* Company, and assigned by said company for the benefit of creditors, and subsequently purchased by James A. Richmond and by him sold and assigned to the Dr. S. A. Richmond Nervine Company, the appellant in this case, I quote (and make it an appendix to this brief) from the examination of Dr. S. A. Richmond and James A Richmond in an interference case with reference to one of these trade-marks, and which is in evidence in this case.

In the affidavits of Dr. Samuel A. Richmond and James A. Richmond, and in their testimony, they agree, and about that there is no dispute, that the trade-mark known as the portrait of Dr. Richmond and the four-globe trade-mark and the eight-ounce bottles were all designed by Dr. Richmond in the fall of 1883; that they were adopted by the company and engravings obtained for the trade-marks, and orders placed for the bottles and caddies and cartoons with the said trade-marks printed or stamped on them prior to April 1884.

This is not controverted, except that Dr. Richmond says that whatever he did in that behalf he did solely for himself. But his acts and his words are at war with each other from first to last.

Dr. Richmond, however, contends that notwithstanding such designing by him as president and general manager of

the company, and his report to the company and their procurement by the company, and their being paid for by the company, and used by the company, and notwithstanding a circular was sent out by the company announcing that the change would take place on the 1st of May, and that after the 1st of May, 1884, no medicine would be genuine unless put up in accordance with notice contained in that circular; that is, put up in an eight-ounce bottle with the portrait of Dr. Richmond blown in the side and incased in a cartoon or caddy with the trade-mark of the portrait of Dr. Richmond upon one side and the four-globe portrait on the other with the name of the Dr. S. A. Richmond Medical Company, St. Joseph, Missouri, and the words "New Trade-mark" and "New Style" printed on the wrapper, and about the trade-mark as shown in the specimen which appears in this brief.

Notwithstanding all this, the doctor claims that the company acquired no right to said trade-marks, and that they were his alone, and that, notwithstanding he had sold, assigned and transferred to the Dr. S. A. Richmond Medical Company all his right, title and interest in and to the formula for manufacturing said medicine, the trade-mark and good-will, yet he could at his leisure and pleasure, and in defiance of the right of the company and over its protest, appropriate to himself, use and enjoy all the rights with reference to manufacturing and selling said medicine the same as if said sale and assignment had not taken place.

The folly of this contention becomes apparent when we consider the facts apart from Dr. Richmond's *ex post facto* efforts and statement.

He admits and swears, as do all the parties to this action, that he assigned and transferred all his interest in the formula, right to manufacture, trade-mark, and good-will of the business to the Medical Company, and that it was done

to carry on the business he had theretofore conducted. It would seem clear as a legal and moral proposition, that he could not sell and transfer these rights and interests to another party and yet retain them.

He could not part with the formula, trade-mark and good-will of the business and yet retain and enjoy it to the exclusion of the transferee of the same property and rights.

Again, he testifies, and it is admitted on all hands, that the portrait trade-mark and four-globe trade-mark, and the eight-ounce bottle with his portrait blown therein were devised for the express purpose of being used in connection with the Samaritan Nervine and not otherwise; that this new bottle, and these trade-marks, were to supersede and confessedly did supersede the old-style bottle and trade-mark, and the trade and public were notified to that effect, and that no medicine would be genuine that was put up or sent out on or after the 1st of May, 1884, otherwise than in the eight-ounce bottle enclosed in the caddy or cartoon bearing the portrait trade-mark and the four-globe trade-mark; and all steps were taken to make said change and it was made, and the testimony is simply overwhelming to this fact: Eva E. Richmond testifies to the fact, John F. Tyler testifies to the fact, so does Draut, the secretary, so does John Crist, and so does Wainshank, and it is also admitted by Dr. Richmond and James A. Richmond, his brother, except they say that the Doctor did it all *on his own hook* and on his *own account*, which is something *worse* than *absurd* on its face.

Beyond that, from that time, May 1st, 1884, on, *no other bottle or trade-marks were used by the Medical Company* or its successors and assigns except *this new style*, and any other style had been, through the effort and agency of Dr. Richmond himself, acting for the Medical Company, declared to be spurious and not genuine.

So it is clear, that all there is of value or ever was, is the formula and right to manufacture this Nervine Medicine and the trade-marks and good-will of the business, which are inseparably united, and all these were by Dr. Richmond sold and assigned to the Medical Company, and by the Medical Company, on Dr. Richmond's advice, assigned for the benefit of creditors, and by the assignee sold to James A. Richmond, who testifies over and over again that there was *assigned everything that the Medical Company had*, and that *he bought everything that was assigned*, and that that embraced the personal property, rights, trade-mark, formula, and good-will of the business, and Dr. Richmond says the same, but they persistently claim that that did not include the new form of bottle or the new trade-marks, affecting to believe that by some mere mental process the Doctor segregated from the company's property and took to himself the new bottle and trade-mark prepared for and adopted to use with the new bottles. In case the mental reservation does not find favor with the court, then he says the Doctor was the *equitable* owner of all the property and outfit anyway, and could do as he pleased with it without regard to the claims or protest of the company, "and that's the quarrel."

Dr. Richmond *swears* that his wife, while he yet abode with her assisted him with money to create and start the business, that he gave her the stock in consideration thereof. That it is *hers*, and that *he* has no interest in it.

She swears to the same thing, so do other witnesses familiar with the facts. But after he ran away from his family and pitched his tent at Tuscola, Ill., he denied the faith and the truth of everything he had previously said and the integrity of everything he had previously done.

He denies that his wife furnished a penny.

He denies that she had *any* interest whatever in the stock.

He swears in the teeth of his former oaths, and oft re-

peated statement and acts, that Eva E. Richmond held the stock in trust solely for his benefit and not otherwise; not only that but he calls—

James A. Richmond, his brother;
Mattie Richmond, his sister-in-law;
Eva E. Thompson, his half-sister;
T. A. Richmond, his sister-in-law;
Everett P. Thompson, his half-brother;
George Haines, his cousin;
A. W. Bragg, his half-brother;
A. N. Bragg, his cousin,
all of Tuscola, Ill.,

And they all swear that once on a time Eva E. Richmond told them, and each of them, "that she held the stock in trust for the Doctor."

Here we have not only "his sisters, his cousins and his aunts," but his brother and half-brothers, swearing that Eva E. Richmond went to Illinois and told them, not only what was confessedly untrue, but told it in technical legal phrase, such as a woman never uses, to wit, that she "*held that stock in trust for the Doctor.*"

They also all say she told them that her father never *gave her anything.*

Just why she should have said to each one of these people what was confessedly false, and how she happened to do it in technical legal phrase, is past finding out.

They each of them say Eva E. Richmond also told them that she held her home "*in trust for Dr. Richmond*"; that it was all his.

Thus the Richmond family of Tuscola have this deserted wife, uttering untruth after untruth in order to make it appear that Doctor Richmond owned *her* home—*her stock*, and that her father had *never given her a penny.*"

It is submitted that even if the statement alleged to have

been made by this wife and mother was of consequence in determining the issues joined herein, the fact that Dr. Richmond himself, Eva Richmond herself, and all who had personal knowledge of and interest in the business, testified that Eva E. Richmond was the *bona-fide* owner of the stock and property is conclusive against the truth of the alleged utterance of Eva E. Richmond to the battalion of "sisters, cousins and aunts," even if we ignore the *inherent improbability* of the truth of their refrain.

In the appendix to this brief the evidence cited is for convenience of reference collected.

I must again review the controlling facts in order to make and keep clear before the mind the course of Dr. Richmond. He is tangled in the meshes of all the facts, circumstances, utterances and doings of the business with which we are dealing.

It is impossible, without repetition and reiteration of certain facts, to present the points of this case upon which the right of the parties hinge.

The statement of Dr. Judson, secretary of the Medical Co., as reported by the witness Hubbard, is to the effect that the company was not insolvent, as urged by Dr. Richmond, and there was no occasion whatever for the assignment, and the subsequent developments render it very probable that that was true.

Appraisers were appointed and, as stated by the assignee, heretofore referred to, on Dr. Richmond's evidence or suggestion of the value of all the property and effects, the assigned property and interests were appraised at $998, and immediately thereafter Wolverton, the attorney of James A. Richmond, purchased the property for $1,000, and immediately turned it over to one Powell. The assignee having learned that there was something wrong about it, declined to deliver the property, and Powell proceeded to replevin

such part of it as could be taken under the writ, and as soon as it was recovered, Dr. Richmond says Powell leased it to him, including the trade-mark of "*a man falling in a fit*," *and also the right to manufacture a medicine called Samaritan Nervine*, and with this outfit he proceeded to Chicago, as hereinbefore stated.

Query: How did it become necessary for Dr. Richmond to lease that which was his own? And if *he* still had the right to manufacture Samaritan Nervine, why was it necessary to obtain that right by lease from Powell?

Subsequent developments made it perfectly plain that that appraisement and sale was fraudulent.

It was declared so by the court and set aside, and the same property sold afterwards to James A. Richmond for $25,000.

All this shows, at least to my mind, that the assignment suggested and carried out by Dr. S. A. Richmond was not in the interest of the creditors of the company, but was a scheme to get possession of the property, but was baffled by the court.

He sustained the same fiduciary relation to the NERVINE Company that he had to the Medical Company, and went right on making and selling the medicine, using the bottles and trade-marks which had been adopted and provided by the Medical Company and assigned to Tyler for the benefit of creditors.

The company was prosperous while Dr. S. A. Richmond was with it, and was prosperous after he left it, up to the time of this litigation.

A controlling question is, what rights, property and interest vested in the assignee by virtue of the assignment of the Medical Company, for it is not questioned that those rights and interests, whatever they were, became vested in the Dr. S. A. Richmond Nervine Company, the appellant in this

case, in the manner heretofore pointed out, and all this hinges upon whether Dr. S. A. Richmond could do a thing and not do it, at the same time; whether it was competent in law for him to sell, assign and transfer property to the Medical Company, and yet retain in himself the sole right to the property so sold.

It must not be overlooked that the small bottle bearing the trade-mark of "a man falling in a fit," the small bottle with which that trade-mark had been used, had been abandoned by the Medical Company, and the trade advised that the medicine put up in that way and with that trade-mark after the *1st of May, 1884, would not be genuine.*

So it must follow that if the Nervine Company has not the right to manufacture and sell the Samaritan Nervine and put it up in the new bottles with the trade-marks in controversy, then it has no rights at all in the premises, and Dr. S. A. Richmond has succeeded, with the aid of the court, in taking this property from the company and appropriating it to his own use.

EVIDENCE.

DID DR. RICHMOND PART WITH ALL HIS INTEREST IN THE BUSINESS OF MANUFACTURING THE SAMARITAN NERVINE, &C.?

1. The Dr. S. A. Richmond Medical Company was organized to purchase it and conduct the business of manufacturing and selling these Nervine medicines. (Rec., p. 57, and bottom of pp. 33 and 34 and p. 36; read it all.)

2. May 1, 1882, Dr. S. A. Richmond sold, assigned and transferred all his property, rights and interest in the business of manufacturing and selling Samar-

itan Nervine he had theretofore carried on, including trade-mark, good-will of business, &c. See Dr. Richmond's answer (par. 1 and 4, Rec., p. 10, top of page and par. 4 same page, and top of next page, 11).

Dr. Richmond says in his affidavit (Rec., bottom of p. 20 and top of p. 21):

> * * * that said assignee refused to deliver to him (A. B. Powell) any of said assets; that thereupon the said A. B. Powell recovered possession of all the personal property that he could find by suit in replevin; that afterwards this affiant rented and *leased said personal property and the right to use said trade-mark* of "a man *falling in a fit*," *and the right to manufacture a medicine known as Samaritan Nervine.* Said last-named trade-mark and said right to manufacture said medicine having been sold by said assignee (John F. Tyler, assignee of the Dr. S. A. Richmond Medical Company) to said Wolverton, and by him assigned to said A. B. Powell.

2. James A. Richmond (Rec., bottom of p. 29 and top of 30) repeats verbatim what the Doctor swore to as above set forth. (Read also bottom of page 32.)

3. Michael Draut, shareholder and secretary of the Company (Rec., pp. 63, 64, 65), produces books of the Medical Company.

4. See assignment from Tyler, assignee, to Jas. A. Richmond. (Rec., p. 85.)

5. Again, Dr. S. A. Richmond says, (Rec., p. 134, my brother "James owned (purchased from the assignee,) the entire business, that is, the formula,

trade-mark and good-will of the business." (See Rec., p. 134.)

"My brother James * * * bought the trade-mark of a man falling in a fit and the good-will of the business to manufacture Samaritan Nervine." (See Rec., p. 136, bottom of page.)

James A. Richmond confirms Dr. Richmond. (See Rec., p. 141 and p. 142, middle of page.) "Medical Company assigned all it had."

"At the time the order for cartoons was given I knew that the company was involved and would have to make an assignment and I expected to buy it in and carry on the business. After the assignment it assumed a different attitude from what I expected." (He failed to get the property for $1,000 as he expected.) "I started the business in Chicago without the consent or approbation of the old company."

Record, page 146: "I was not authorized to make any change in the wrapper or size or shape of the bottle without the *approval of the company.*"

Record, page 139: "The trade-mark of a man falling in a fit *I do not claim as my property*, therefore do not expect to use said trade-mark on my goods manufactured by me at Tuscola."

Record, page 136: "My brother James bought the trade-mark of a *man falling in a fit and the good-will of the business*, for the manufacture of Samaritan Nervine."

When were the new style bottles, eight-ounce, and the portrait and four-globe trade-marks prepared, and by whom, and when adopted, and what was done in that behalf?

November or December, 1883. Evidence of Eva E. Richmond (Rec., pp. 25, 26, and 27) says:

"Dr. S. A. Richmond, as shareholder, president and manager of the Dr. Richmond Medical Company, had charge of the designing, wrapping, &c. That in December, 1883, or early in January, 1884, he (Dr. Richmond) represented to the stockholders in said company that it was necessary to change the form of putting up the Nervine; that the old trade-mark or design upon the wrappers of "a man falling in a fit" was not sufficiently conspicuous, and he designed a new wrapper, having his portrait in front, and a smaller portrait of himself on the back of the wrapper between four globes.

"He also represented that the bottle should be enlarged and bear his portrait blown in it.

"The changes were assented to and adopted. Engravings were made, and all paid for out of the company's funds.

"* * * the notice hereto attached, marked Exhibit 'A,' that such change would be made on May 1, 1894, was sent to all patrons and to the public generally.

"In furtherance of this change a very large number of caddies or cartoons in the new style were ordered by Dr. S. A. Richmond for the company from the Novelty Paper Box Co., of Philadelphia.

"A consignment of these cartoons came before the 1st of May; another about the 10th of May.

"About twenty-five gross of the new style bottles were received about the 1st of May, 1884;

* * * these new style bottles and caddies or cartoons were exclusively used on all Samaritan sent out by said company after the 1st of May, 1884, to the 13th of that month.

2. James A. Richmond (Rec., p. 28, says Dr. Saml. A. Richmond told him about the new style of bottles and trade-marks about December 1, 1883, (but says the Doctor intended them for himself).

3. Michael Draut, shareholder and secretary part of the time of Richmond Medical Company, says (Rec., p. 64, bottom of page), * * * "the latter part of 1883 the company determined to change the plans of the wrappings and the size of the bottles; the latter enlarged to an eight-ounce bottle with Dr. Richmond's picture blown in it, with his name and St. Joseph, Mo., on the front, and on the other side the word Samaritan, and on the other side of the bottle the word Nervine.

"The wrapper was to be changed to a caddy or cartoon, with Dr. S. A. Richmond's picture on the front, and on the back Dr. S. A. Richmond's picture between four globes, &c."

This change was determined on about December, 1883. Dr. Richmond had charge of all the advertising, made all the necessary arrangements for the intended change. The change was to go into effect May 1, 1884.

The work was done by the Chicago Engraving Company. His picture between four globes and other engravings we had made for the change of advertising circulars, &c.

Witness produces bills for this work, made out against and paid by the company. May 5, 1884,

company paid the Chicago Engraving Company $294.25. Circulars announcing this change were printed, showing and explaining the change, and were sent out by the company. C. P. Kingsbury, of St. Joseph, Mo., printed the circulars for the company, in January or February, 1884. The company paid Kingsbury for printing in January, February and March, April, and up to May 13, 1884, thirteen or fourteen hundred dollars. The circular was widely distributed. Read Draut's testimony, in which he gives details of the ordering bottles, cartoons, &c., and paying for them. (Rec., pp. 67, 68, 69, 70, 71.)

Company paid for cartoon, $120 and $531. (Read all the evidence.)

4. Chas. West (Rec., p 70) was the book-keeper of the Medical Company. He identifies the bills paid by the company for printing the cartoons and for the cartoons and caddies, $120 and $531, in March April, and May, 1884.

5. John F. Tyler, attorney, was the assignee of the S. A. Richmond Medical Company. There were assigned and turned over to him new-style bottles, caddies, &c., May 13, 1884. (Rec., pp. 70, 71.)

6. C. P. Kingsbury, printer and publisher, of St. Joseph, Mo., identifies the bills paid him by the Medical Company for printing the circulars, &c. He printed the portrait of Dr. Richmond and his portrait surrounded by four globes before the assignment. (Rec., p. 72.)

7. John Christ, helper, put up the medicine for the Medical Company.

Heard Dr. Richmond speak of the change in bottles and wrappers before it was made.

The new style of bottles and wrappers were used before the assignment by the company.

Was with the company at the time of the assignment.

Knows that two sacks of circulars announcing the proposed change in bottles and wrappers, which was to take place May 1, 1884, were sent out before the assignment of the company. (Rec., p. 72.)

8. Edwin Weinshank was in the employ of the company prior to the assignment; corroborates the other witnesses as to use of new-style bottles and caddies before assignment. (Rec., p. 72.)

9. John Coombe, printer, St. Joseph, Mo., printed in March, 1884, the pamphlets for the M. E. Conference, held at St. Joe, in that month. On the pamphlet he printed for the Medical Company the cuts of the portrait of Dr. Richmond and the four-globe portrait. (Rec., p. 72.)

10. Seneca Taylor, attorney for Dr. S. J. Richmond, says when he went to the business place of the Dr. S. A. Richmond Medical Company there were on hand new-style bottles, caddies or cartoons, &c. (Rec., p. 87.)

11. James A. Richmond says Dr. S. A. Richmond sent out circulars announcing the change in style of the bottles and caddies or cartoons that would take place May 1, 1884. (But he says the Doctor did this on his own hook, which, in the presence of admitted facts, is absurd.) (Rec., p. 116.)

Says the *Medical* Company did adopt the new style of bottles, wrappers, &c., as an improvement *about December, 1883.*

Says the Doctor first spoke to him about this change in the bottles and trade-marks or wrappers in November or December, 1883, and the Doctor sent out circulars announcing this change, he thinks, in November, 1883. (Rec., p. 118.)

12. Dr. Samuel A. Richmond says circulars were prepared and issued announcing what the change would be. (See Rec., p. 120, middle of page.)

Says the circulars which went out announcing the change from the old style to the new was agreed to about November, 1883. (Rec., p. 120.)

(But he, the Doctor, says HE is the sole owner of the formula and right to manufacture and sell the Samaritan Nervine; that he owns the several trade-marks, including the one of the man falling in a fit. (See p. 120.)

13. See bills and drafts of Wm. McCully & Co., of Pittsburgh, for bottles (Rec., p. 129) and same for bottles (same page, 129, 130.)

The following is a copy of the notice sent to customers and the public announcing the change in the style of bottles and wrappers that would go into effect May 1, 1884, prepared and sent out by Dr. S. A. Richmond himself, as president and business manager of the

"Dr. S. A. Richmond Medical Company. The public are hereby notified that on and after May 1, 1884, Dr. Richmond's Samaritan Nervine will be put up in cartoons, and the bottle will also be enlarged and will have Dr. Richmond's picture

blown in the bottle. His picture will also be printed on two sides of the caddy or cartoon surrounding the bottle. None genuine without these inscriptions.

"This change has been made for three reasons, viz: To prevent counterfiting; to prevent breakage, and to furnish more handsome wrapper for a medicine so highly appreciated by the afflicted."

On this circular is a cut of the new style bottle and caddy or cartoon with the Doctor's picture and the four globes, presenting both the front and back view then follows: "The above cuts are facsimile views of the new wrappers and caddy which we have adopted to protect our patrons from fraudulent imitations with which the market is flooded."

And on the lower part of the cut of the bottle, or cartoon, the words:

"Prepared by the Dr. S. A. Richmond Medical Company, St. Joseph, Mo., U. S. A."

EVIDENCE THAT STOCK WAS OWNED BY EVA E. RICHMOND.

1. Samuel A. Richmond testified on oath in the suits pending in Columbus, Ohio.

That Eva E. Richmond owned the stock; that he had no interest in it.

2. Butler's deposition, Record, pages 59, 60.

3. John A. Reed says Dr. Richmond testified in the suits at Columbus, Ohio, that Eva E. Richmond owned the stock in the company; that he (Dr. Richmond) had no interest in it. (Rec., p. 71.)

4. W. K. James, attorney, St. Joseph, says that Dr. Richmond testified under oath that Eva E. Richmond owned the stock in the Richmond Medical Company. (Rec., p. 73.)

We copy here a certificate of Dr. Richmond, which shows his state of mind in April, 1885, as to ownership of stock:

(Copy.)

"EXHIBIT N N."

ST. JOSEPH, MO., *April 10th, 1885.*

This is to certify that Rees Shannon gave Eva E. Richmond 40 acres of land, which I sold for $1,700, including interest money. This money was all applied on life insurance for the benefit — Eva E. Richmond & children by me since 1882. I have paid my life insurance, four dividends declared on her part of the stock in the medical Co. & the nervine Co. See records for full particulars.

S. A. RICHMOND.

Receipt or statement of Dr. S. A. Richmond. (Rec., p. 82.)

5. M. Draut, secretary of both companies, says Dr. S. A. Richmond told him that "the stock was given to Eva E. Richmond in consideration of the money and aid she had furnished to start the business. Never heard it spoken of in any other way than as her stock. It was so treated. I never heard any such talk as that I and Eva E. Richmond held the stock in trust for Dr. Richmond. I bought my stock and paid for it, voted it, drew the dividends." (Produces bank-book showing deposit of dividends.) "Never told James A. Richmond I held stock in trust for Dr. Richmond." (See Rec., p. 149.)

John F. Tyler (Rec., pp. 148–'9) was Dr. Richmond's legal adviser.

"Dr. Richmond told me that everything he had was based on what he had got from his wife, and that he was determined that she should have the benefit in any event.

"Never during the assignment, nor at any other time, did I hear that the stock was not the property of Eva E. Richmond. It was so treated by everybody."

Eva E. Richmond (Rec., pp. 147–'8): "I gave Dr. Richmond $1,000; my father gave me after he (Dr. Richmond) engaged in business in St. Joseph, Mo., (preparing his Samaritan Nervine); also some land worth $700 which the Doctor received. Father gave me $50 at one time, $300 at another, which I gave to the Doctor.

"When I gave him this money he was making medicine on the cooking stove at home. He had no means.

"I was given the stock for what I had given him, and to support me and my children.

"*I never said what I am reported to have said* at Braggs' (Tuscola, Ill.), that I held the stock in trust for Dr. Richmond. There was no conversation about the business or note or anything pertaining thereto.

"The subject was never mentioned between Mr. Bragg and myself. I never said to James A. Richmond that I held my stock and my home in trust for Dr. Richmond.

"There never was any arrangement or understanding that I would hold stock or property in trust for Dr. Richmond.

"I was stricken with grief when the Doctor ran away, but soon after I went to the office and took charge of the business, paid bills, &c.

"I have six children I support since the Doctor ran away.

"The Doctor received the dividends as my husband and my agent.

"He ran off, taking the money with him; left me with baby and five children; bills unpaid."

The action of the Board of Directors of the Dr. S. A. Richmond Nervine Company shows the relation Eva E. Richmond and Dr. Richmond sustained to the company.

The following copy of the record of one of the meetings of the Dr. S. A. Richmond Nervine Company is instructive, as indicating Dr. Richmond's relation to it, and also that of Eva E. Richmond and others:

ST. JOSEPH, MO., *June* 23, '85.

At a call meeting this day held by the board of directors of this company the following were present: Jas. A. Richmond, president; Michael J. Draut, sec't'y, and Eva E. Richmond, the said James A. Richmond, Michael J. Draut, and Eva E. Richmond being all the stockholders of said company.

On motion, it was unanimously ordered that Eva E. Richmond be elected as a director to fill the vacancy caused by the resignation of John Christ. Dr. S. A. Richmond, being present, offered to sell to this company the copyright and the right to secure the title to such copyright under the laws of the United States for three books, to be entitled Manhood and Womanhood, Venereal Diseases, and Temperance, for the sum of five hundred dollars.

On motion, said offer was accepted and Dr. Richmond, treas. of this company, authorized and directed to credit himself on his account for the sum of five hundred dollars in payment for said copyrights.

And comes now Dr. S. A. Richmond, treas. of this company, and presents his accounts of receipts and disbursements, which *is* here spread of record: Receipts,
528 $19,101.32; disbursements, $6,375.62; and it appearing that there is in the hands of the treasurer $5,000 which is not needed for the payment of debts, it is ordered that a dividend of $250.00 per share be declared on the stock of this company and paid to the holders of said stock, and that said dividend be credited to the treas. and charged to the surplus of his account.

On motion, Mrs. Eva E. Richmond was elected vice-president of the board of directors of this company.

On motion, board adjourned.

M. J. DRAUT, *Sec'y.*

J. A. RICHMOND, *Pres't.*

Dr. Richmond's Groundless Claim.

The only evidence produced that the Doctor has any trace of claim to the two trade-marks of the portrait of Dr. Richmond and the four-globe trade-mark which constitute, represent and stand for the good-will and all there is of the business of the *Richmond Nervine Company* is his own testimony and that of his brother Jim.

But their *spoken words* are utterly disproved by their earlier acts and utterances.

It is confidently submitted that what Saml. and James Richmond *say in 1889*, after the Doctor had left his wife and children, and had determined to wrest from them their property by appropriating to himself or destroying the business of the S. A. Richmond Nervine Company, should have no weight as against the words spoken and acts done by him when acting as president and manager of the S. A. Richmond Medical Co. He designed said bottles and the trade-marks and caddy for putting up the medicine, and notified the trade and the public of the proposed change, and admonished all persons that from and after *May 1, 1884, no medicine*

would be *genuine* that was *not put up in eight-ounce bottles* with the *portrait of Dr. Richmond blown* in the bottle and encased or enclosed in a *caddy* or *cartoon* with the *trade-marks* of the *portrait of Dr. Richmond* on the front and the *portrait of Dr. Richmond surrounded with four globes on the back* with the words, *New Style*, adopted in 1884, *prepared by the Dr. S. A. Richmond Medical Company, of St Joseph, Mo.*

It will not be forgotten that—

(*a.*) These trade-marks were prepared *by Dr. Richmond, as manager of the Richmond Medical Company*, in November or *December, 1883*, to be used, as *all parties* testify, on the *Richmond Samaritan Nervine;* in the language of the circular Dr. Richmond then sent out, to "prevent counterfeiting, to prevent breakage, and to furnish a more handsome wrapper for a medicine so highly appreciated by the afflicted."

(*b.*) That after the date announced in the circular to the trade and public, to wit, May 1, 1884, *no medicine was ever sent out* put up in any other manner than as announced in that circular.

(*c.*) The old five-ounce bottles and the trade-mark of "a man falling in a fit" and the old wrapper were *discarded by the company* and wholly superseded by the new eight-ounce bottle, the caddy or cartoon, with the new trade-marks on the front and back thereof, and in all respects as promised in the notice of the change.

(*d.*) From and after May 1, 1884, as announced by the Dr. S. A. Richmond Medical Company through *Dr. S. A.* Richmond, as its president and manager, *the test and genuineness of the company's medicines* would

be and ever since has been the eight-ounce bottle with the portrait of Dr. Richmond blown in the side, the bottle encased in a cartoon or caddy, with the trade-mark consisting of the portrait of Dr. Richmond on the front, and his portrait surrounded by four globes on the back of the cartoon; with the words, New Style, adopted in 1884, prepared by the Dr. S. A. Richmond Medical Company, St. Joseph, Mo., U. S. A.

To permit Dr. Richmond to use his fiduciary relation to the Medical Company to design and have adopted the new bottle and new trade-marks, and proclaim to the public that the medicine put up in any other way after May 1, 1884, would not be genuine, and then take and hold to himself the sole right to use said bottles and trade-marks, or to use them at all against the right and protest of the company, would be to sanction not merely a technical legal fraud, but an open *actual fraud* on the company, and of course on the stockholders and creditors.

(*e.*) If the Dr. S. A. Richmond Medical Company did not adopt and own these eight-ounce bottles and trade-marks then there was no company, and there were no eight-ounce bottles and no trade-marks. One fact is not a whit more certain than the other—if there is any value at all in the evidence furnished by the words and actions of men.

(*f.*) Thus, the said trade-marks were inseparately blended and identified with the business of manufacturing and selling Dr. Richmond's Samaritan Nervine. They were and are as inseparable as any business and its good-will could or can be.

(*g.*) It, therefore, goes without saying that if Dr. Richmond is entitled to the trade-marks in controversy, the business those trade-marks represent is his—the Nervine Company is his—for, in 1883, the trade and public were notified that on and after May 1, 1884, the presence of those trade-marks on the eight-ounce bottle and on the caddy or cartoon enclosing the bottle would be the test of the genuineness of the Samaritan Nervine.

(*h.*) Can there be folly more supreme than for Dr. Richmond, six years after the announcement and adoption of that change by the company, through him as its trusted officer and agent, to claim that these trade-marks so adopted and used did no go with or belong to the business of manufacturing Samaritan Nervine: that they were always *his personal* property, and that the Richmond Medical Co., which he and Jim admit, and, as we know, had acquired the formula and right to manufacture said medicine, with the trade-mark of "a man falling in a fit," and the good-will of the business as theretofore carried on by Dr. S. A. Richmond, never had any interest whatever in said trade-marks.

(*i.*) If there is a *link* or *syllable* of evidence wanting to prove that the trade-marks *did* belong to the Richmond *Medical* Company and *now* belongs to the Dr. S. A. Richmond Nervine Company, I am wholly unable to detect the fact. If it admits of a doubt, I have no proper apprehension of the force and effect of evidence.

But the Doctor, if defeated in his effort thus to appro-

priate the property of the company, shifts his ground and claims the company itself and all it has, as an equitable owner, saying—

1st. That he furnished all the property and business the Medical Company had as the basis upon which its capital stock was issued.

That the forty-seven shares of stock were given to Eva E. Richmond at his request, and that she agreed to hold them *in trust* for him; or, in any event, as *he* advanced or supplied the property and assets, which was in fact the capital of the company, there is a resulting trust in his favor, and Eva E. Richmond is therefore a trustee, holding the shares of stock in trust for him, and so with the shares held by other parties.

There are several answers to this post mortem claim.

1st. The doctor has, when there was no reason to dissemble or conceal the truth, and no temptation to misrepresent, not only said over and over again that the stock was given Eva E. Richmond on account of money and aid furnished and supplied by her, to found and carry on the business, but he has so testified under oath, stating as a witness that Eva E. Richmond owned that stock, and that he had no interest whatever in it.

Eva E. Richmond testifies to the same thing; and it is made clear by the officers of the company and other disinterested witnesses, that the stock was always referred to and treated as Eva E. Richmond's, and no other idea was developed until the doctor left his family.

Was There a Resulting Trust?

If it was true (and it is not) that Eva E. Richmond had not furnished a cent, but the Doctor had given her the stock for her and the children, the law would not imply a trust in Dr. Richmond's favor as against that wife and those children. Such a transaction between the husband, who is charged by law with supporting his wife and children, and the wife would be held to be made an advancement for the wife and children.

No trust would arise in favor of the husband, however it might be as to his creditors. (Jackson *vs.* Jackson, *supra*, 91 U. S., 122.)

The claim that the Doctor *leased* the trade-marks to the Richmond Nervine Company *cannot be true because* Dr. Richmond had *no trade-marks to lease.*

He gives his whole case away when he testified, and had Jim to corroborate it, that he, Dr. Richmond, leased from POWELL, in July, 1884, * * * *the right to manufacture a medicine known as Samaritan Nervine.*

He thus admits, if there was in fact any question about it, that the *business* of making Samaritan Nervine was by the Doctor sold and transferred to the Richmond Medical Company, and from that corporation to the assignee, and through him to Wolverton and to Powell, and finally by *mesne* assignment through J. A. Richmond to the present holder, The Richmond Nervine Company.

This is utterly irreconcilable with any claim of right to ownership in the trade-marks as a property or

right, apart from the medicine with which alone the trade-marks had ever been used.

Finally we submit—

1st. Dr. Saml. A. Richmond being on the 1st of May, 1892, the owner of the formula and right to manufacture the medicine known as Dr. Richmond's Samaritan Nervine and Nervine Pills, and the trade-mark of "a man falling in a fit," designed for and used only on said medicine, and the plant and good-will of the business of making and selling said medicine as carried on by him at St. Joseph, Mo., it was competent for him to sell, assign and transfer said property, rights, trade-mark and good-will of business, to the Dr. S. A. Richmond Medical Company, and this he did on the 1st or 2d of May, 1882.

2d. That when said sale, assignment and transfer was made it vested in said company all the right, title and interest of the said Dr. Richmond in the business theretofore carried on by him at St. Joseph, Mo.

Kid *vs.* Johnson, 100 U. S., 617.

3d. That having sold to and vested in said company said rights and interests, and the company having engaged in the business of manufacturing said medicine, using said formula, trade-mark and good-will so purchased, Dr. Richmond had no more legal right, without the consent and against the protest of said company, to engage in the manufacture and sale of said medicine, using the trade-mark and good-will of the business he had sold and assigned, than a STRANGER would have had.

4th. Dr. Richmond having entered the employ of said company, and having become its president and general business manager, charged with the duty to supervise the preparation and sale of said medicine and manage and control the advertising, preparation and use of trade-marks, &c., he could not, while sustaining such fiduciary relation to the company, design for and secure the adoption by the company of a new style of bottle and new trade-marks solely for use in connection with said medicine, and notify the trade and public of the adoption of said new-style bottles and trade-marks, and that no medicine put up after the 1st of May, 1884, would be genuine unless put up in said new-style bottles encased in caddies or cartoons with the new trade-marks printed or engraved thereon, and proceed, as such president and general manager, to put up the medicine in the new style of bottle, and use the new trade-marks, without the consent and against the right and protest of the company, for himself and on his own account manufacture and sell said medicine, using said formula, new style of bottles, and trade-marks.

5th. Such conduct by Dr. Richmond would be such a positive fraud on the rights of the company that a court of equity would promptly enjoin him, or ought to.

6th. It was competent for Dr. Richmond, on the organization of the Dr. S. A. Richmond Medical Company, to transfer his property, trade-mark, and good-will of business to said company, as the basis of its working capital, and in consideration of the stock to be issued; and for him to direct,

if he saw fit and was entitled to the stock, that any number of shares be issued or transferred to his wife for her benefit and that of her children, in consideration of money she had advanced and aid she had given in creating and building up the business; or, if he chose, without any consideration of that character. And such transfer of stock would be good and valid as between Dr. S. A. Richmond and his wife, and no presumption of equitable ownership in him as against that wife would arise.

7th. Nor will this court go into that question in a suit between the company and Dr. Richmond in a case like this, where the *company* is litigating about *its* ownership of certain property and seeks to prevent Dr. Richmond from destroying its business by unlawfully using its trade-marks, &c.

The stockholders are not parties; their rights and interests *inter se* cannot be settled, nor is that a proper subject of inquiry in this proceeding.

Hopkins *vs.* Lead Co., 72 Ill., 373–9.
Brenton *vs.* Hoffman, 61 Wis., 20.
England *vs.* Dearbourn, 141 Mass., 509.
Commonwealth *vs.* ——, 13 Penna., 133.
Cook's Stockholders, Sec. 709 and note.
Cook's Stockholders, Secs. 4*a* and 276, note.
Chandler *vs.* Brown, 77 Ill., 333.
Bakers *et al. vs.* ——, 32 Ill., 79.
Lamore Ins. Co. *vs.* ——, 102 Ill., 41.

The sale and transfer made as aforesaid vested in the purchaser such property, interest and rights, as the assignee held, and

8th. When the Dr. S. A. Richmond Nervine Company purchased said property rights and interests, and proceeded with the business, using the new-style bottles and trade-marks and none other, as announced in the circular sent out to the trade by Dr. S. A. Richmond, for and on behalf of the *Medical* Company, the assignor under which, through mesne assignments, the *Nervine* Company took and holds title; it was not competent for Dr. S. A. Richmond, at his will and pleasure for himself and on his own account and against the rights and protest of the Nervine Company, to engage in manufacturing and selling said medicine, using the eight-ounce, or new-style bottles, and new trade-marks of the company, which had, according to the announcement of the company through Dr. Richmond, superseded the old-style of bottles and old trade-mark, and his doing so would be (or ought to be) enjoined by a court of equity.

9th. Whether Dr. Richmond had, as he claims, some interest in the stock issued or transferred to his wife is not a question *this court* will try in this proceeding, whatever the court below may have done.

10th. The trade-mark and good-will of a business is property, and where the value of the business depends upon and is inseparable from the trade-mark or good-will, a sale and transfer of the plant, property and good-will of the business includes any and all trade-marks designed and used exclusively on the merchandise produced by said business without being specifically named in the deed of assignment.

11th. A *bona fide* assignment for the benefit of creditors or to a purchaser of the property, trade-mark and

good-will of business, is utterly irreconcilable with the retention by the seller or assignor or one interested in the business, of a trade-mark or other right or interest which is identified with and necessary to the use or enjoyment of the thing so sold and assigned; and where retention of such trade-mark or interest renders the rights and property so sold and assigned worthless, such retention, even if not done secretly and by a mere mental reservation, would be a fraud upon the law and upon creditors, and would not prevent the vesting in the assignee the property or right so sought to be retained.

12th. The fact that Dr. Richmond's *portrait* and *name* constitute a part of the trade-marks does not restrict the right or limit or qualify the ownership or right of the company to use the bottles and trade-marks, nor have the effect to leave vested in Dr. Richmond the right to use the property and trade-marks and good-will of a business he had sold and transferred. (See Pepper *vs.* Lobert, 8 Fed. Rep., 29—Opinion by Justice Matthews; Kid *vs.* Johnson, 100 U. S., 620.)

It will hardly be questioned that "a proper name may by use have lost all its personal nature and become only a designation of a particular establishment, character of goods or business, in which case an assignment of the establishment the exclusive right to make the particular character of goods, or the business, will transfer to the purchaser a right to use such name as a trade-mark in continuing the same business.

Vol. 26 Am. and Eng. Enc of Law, page 377, Title Trade-Marks, and cases there cited.

> Any writing or act of the parties from which the clear intention can be gathered to assign an assignable trade-mark, or a business with which it is inseparably connected will suffice to pass title.
>
> See same volume, page 384.

We submit, finally, that from whatever standpoint we approach the consideration of this case, the error of the Court below becomes apparent and the decree should be reversed, and an injunction restraining Dr S. A. Richmond from manufacturing and selling said medicines, and using the bottles and several trade-marks in controversy in the conduct of that business should issue.

BENJ. BUTTERWORTH,
JULIAN C. DOWELL,
Attorneys for Appellant.

HUSTON & PARRISH,
St. Joseph, Mo.,
Of Counsel.

67

DR. RICHMOND'S

SAMARITAN

NERVINE

THE GREAT

NERVE CONQUEROR!

Cures Epileptic Fits, Convulsions, Spasms,
St. Vitus Dance, Spermatorrhœa,
Seminal Weakness
AND ALL

Nervous AND Blood DISEASES

THE ONLY KNOWN POSITIVE AND SURE CURE FOR

EPILEPTIC FITS

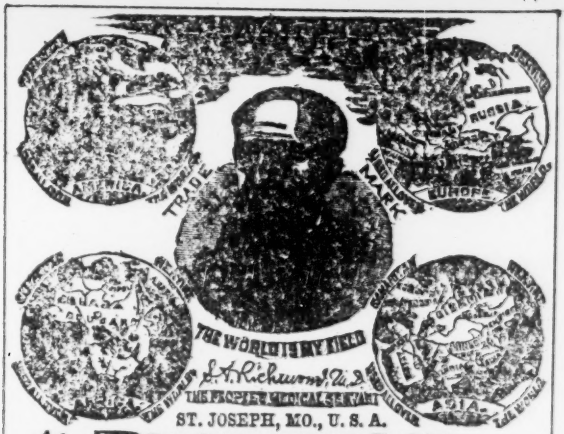
Price, $1.50 per Bottle
OR
Four Bottles for $5.00

PREPARED BY:
THE DR. S. A. RICHMOND MEDICAL CO.
ST. JOSEPH, MO. U.S.A.

C. P. Kinealy Steam Printer, St. Joseph, Mo.

TRADE MARK.

68



ST. JOSEPH, MO., U. S. A.

DISCOVERER OF SAMARITAN NERVINE,

THE KING OF ALL REMEDIES.

IT IS AN UNFAILING AND INFALLIBLE REMEDY FOR ALL DISEASES OF THE

KIDNEYS AND LIVER,

Biliousness,	*Jaundice,*
Headache,	*Indigestion,*
Dizziness,	*Scrofula,*
Pains in the Back,	*Syphilis,*
Gravel,	*Inebriety,*
Brick Dust,	*Alcoholism,*
Stone in Bladder,	*Opium Eating,*
Dropsy,	*Female Disorders,*

And all Diseases caused by Disordered Kidneys and Liver.

A Purely Temperance Remedy,

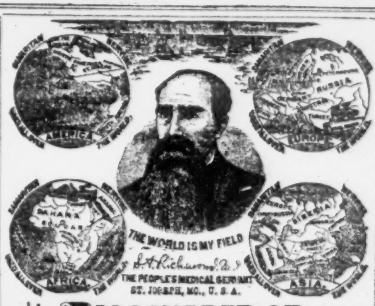
FREE FROM OPIUM AND ALL ALCOHOLIC STIMULANTS.

NOTICE.

The public are hereby notified that each and every GENUINE bottle of Dr. Richmond's Samaritan Nervine has the words "Samaritan Nervine" together with Dr. Richmond's name and picture (with word "trade" on one side of the face and "mark" on the other side) blown in the bottle. His picture, with the words "trade" "mark," as above mentioned, will also be printed on two sides of the caddy or cartoon surrounding the bottle, and manufactured at St. Joseph, Mo., by

THE DR. S. A. RICHMOND NERVINE COMPANY.

Front View of Bottle.



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Stone in Bladder,	*Opium Eating,*
Dropsy,	*Female Disorders,*

And all Diseases caused by Disordered Kidneys and Liver.

A Purely Temperance Remedy,

FREE FROM OPIUM AND ALL ALCOHOLIC STIMULANTS.

NOTICE.

The public are hereby notified that on and after May 1st, 1884, Dr. Richmond's Samaritan Nervine will be put up in cartoons, and the bottle will also be enlarged, and will have Dr. Richmond's picture blown in the bottle; his picture will also be printed on two sides of the caddy or cartoon surrounding the bottle. None genuine without these inscriptions. This change has been made for three reasons, viz: To prevent counterfeiting; to prevent breakage, and to furnish more handsome wrapping for a medicine so highly appreciated by the afflicted.

Back View of Bottle.

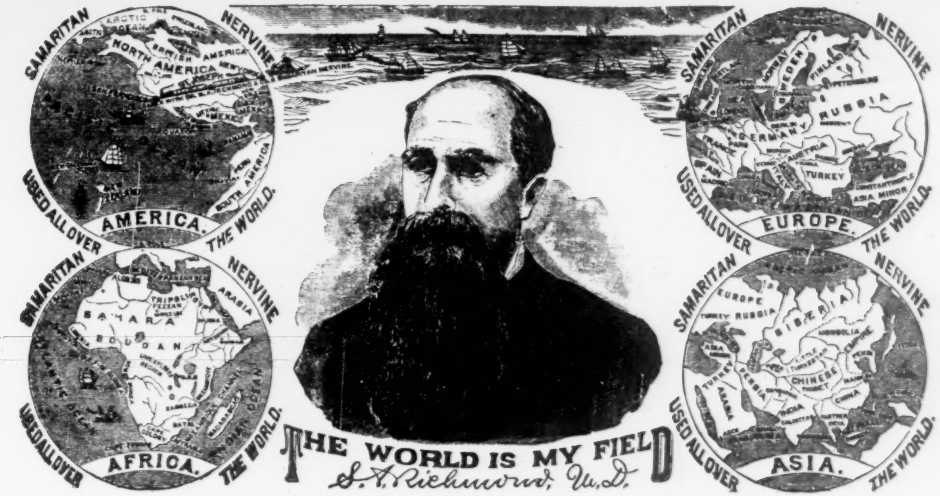
The above cuts are fac simile views of the new Wrappers or Caddy, which we have adopted to protect our patrons from the fraudulent imitations with which the market is flooded.

RICHMOND'S

Liver Pills.

The People's Medical Servant.

St. Joseph, Mo., U. S. A.



NOTICE.—Correspondents are requested to give their Post Office address and name of State every time they write, and in addition, when ordering medicines, their nearest Express Station and name of Express Company. We ship no medicine C. O. D., the cash must accompany each and every order. Remittances should be made in Post Office Money Orders, Bank Draft or Registered Letter.

6 "g"

TO PUBLISHERS:

Owing to the treacheries and frauds of one H. P. Hubbard, an advertising agent of New Haven, Conn., the Dr. S. A. Richmond Medical Company, of St. Joseph, Mo., was compelled to suspend and assign in May, 1884. This was caused by the presentation of a claim by Hubbard against that Company of a balance of $58,000, for advertising claimed to have been done by him for that Company. He had already received from the Company over $60,000 on this account. On a judicial investigation, Hubbard's fraudulent practices were discovered, and he has not and never will recover a cent on his fraudulent claim, and there will be $40,000 of net money in the hands of the assignee to be divided between the stockholders of the late Company. Under an order of the Court, the assets of the late Company, including the right to manufacture and sell DR. S. A. RICHMOND'S SAMARITAN NERVINE, was sold by the assignee to the Dr. S. A. Richmond Nervine Company, a new corporation, which latter Company is now the sole proprietor of this medicine, and is engaged in the manufacture and sale of the original DR. S. A. RICHMOND'S SAMARITAN NERVINE, under the personal supervision of Dr. S. A. Richmond himself. This is one of the standard medicines, and we desire to place it before the public as such and let it stand or fall on its own merits. The new Company has no debts, and will not contract any debts which it cannot pay on demand. And believing that this remedy, so widely and favorably known, will pay its way, we have determined to make a proposition to publishers, as follows, viz: We will contract with you for a five inch advertisement and an eight line reading notice, e. o. d. and weekly for one year, for which we will pay you a price to be agreed upon, depositing in advance to your credit, with any responsible druggist of your city, a sufficient quantity of DR. RICHMOND'S SAMARITAN NERVINE, at wholesale prices, to pay the amount we may agree upon for this advertising. If this proposition meets your views, please advise us accordingly, and give us your LOWEST and BEST RATES for this advertisement, and the name of the druggist you may select.

Yours Very Respectfully,

THE DR. S. A. RICHMOND NERVINE CO.

Attest as exhibit 9 this third day of May 1889. W. R. Hoffmann Notary Public Buchanan County Mo

NOVELTY PAPER BOX CO
PATENTED
JUNE 30TH,
1874.
PHILADA

RICHMOND'S

Liver Pills

THE WORLD IS MY FIELD

Dr. A. Richmond, M.D., U.S.A.

The People's Medical Servant,

St. Joseph, Mo., U.S.A.

RICHMOND'S LIVER PILLS.

A VEGETABLE REMEDY FOR

Constipation, Torpid Liver, Dyspepsia, Biliousness, Jaundice, Malaria, Fever and Ague.

☞ Invaluable in Miasmatic Regions and the West. They Regulate the Liver, Stomach and Blood without draining the system of the source of life.

DOSE—One to three Pills at bed time. Elegantly sugar coated. 100 Pills in each package. **Price, $1.00.**

For sale by all druggists, or may be had direct from us, upon receipt of price.

1852

RICHMOND'S LIVER PILLS.

Aunt Mary, while clearing up the house, finds an old bottle filled with DR. RICHMOND'S LIVER PILLS, and thinking they were the children's sugar pills, she throws them over the fence into a vacant lot, to the utter discomfiture of the feathered ramblers in said lot, who mistook those pills for peas. They are the great silent perambulators. They don't fool round, but attend strictly to business, and are good as an alarm clock.

☞ THESE PILLS ARE NOT GENUINE IF DR. RICHMOND'S PICTURE IS NOT FOUND BLOWN IN THE BOTTLE. ☜

☞ BE SURE AND GET THE GENUINE, AND TAKE NO OTHER. ☜

They are a purely vegetable pill, and are unsurpassed as a remedy for LIVER COMPLAINT, BILIOUS AND TORPID CONSTITUTIONS.

They should always be taken with or without Dr. Richmond's Samaritan Nervine.

They are warranted to be FREE FROM CALOMEL AND ALL OTHER MINERAL POISONS, and are perfectly harmless, and can be taken either day or night. One hundred pills. **Price, $1.00.**

Exhibit A.

D'S
ills.

FIELD.

Servant,
U. S. A

Office Supreme Court, U. S.
FILED.
APR 23 1895
JAMES H. McKENNEY,
CLERK.

IN THE

Supreme Court of the United States.

OCTOBER TERM, 1894.

THE DR. S. A. RICHMOND NERVINE COMPANY,
APPELLANT,
v.
SAMUEL A. RICHMOND,
APPELLEE.

In Equity.
No. 324.

Appeal from the Circuit Court of the United States For the Southern District of Illinois.

Brief for the Appellee.

WM. HENRY BROWNE,
Counsel for the Appellee.

WASHINGTON, D. C.:
GIBSON BROS., PRINTERS AND BOOKBINDERS.
1895.

IN THE

Supreme Court of the United States.

OCTOBER TERM, 1894.

THE DR. S. A. RICHMOND NERVINE COMPANY, APPELLANT, *v.* SAMUEL A. RICHMOND, APPELLEE.	*In Equity.* *No.* 324.

Appeal from the Circuit Court of the United States For the Southern District of Illinois.

Brief for the Appellee.

KEY TO THE CONTROVERSY.

This is desirable at the outset, the better to apply the evidence to what otherwise would be a perplexingly-involved case.—In 1873 the appellee was in business in St. Joseph, Mo., making and vending his Samaritan Nervine. He deemed it best to have his product appear to emanate from a corporation, while affording facility for expansion in capital.—With two clerks he organized a

corporation—the "Dr. S. A. Richmond Medical Company"—under the laws of Missouri. (P. 57).—The concern became involved in debts, fraudulent and otherwise. It was all intended for his own benefit, to ward off impending ruin, that the assignment was made for the benefit of creditors.—His brother James bought the fixtures and other property for $25,000, and proceeded to settle. That gave the Doctor time to breathe. He resumed on his own account, as several months before he had notified the corporation, and having devised and adopted two trade-marks, now in dispute, he took the name of the "World's Medical Company," and resumed the making and vending of his said medicine, at Chicago. He was persuaded to return to Missouri, and organize a new corporation, the present appellant. The capital-stock was $2,000.00, in twenty shares. His brother James, the president, had eighteen of them, and the other two each one share. For a prudential reason, he caused James to transfer to Eva E., the wife of the equitable owner of the whole, the present appellee.—He became treasurer and manager, and was to receive $200 per month, besides medicines for his patients, about $450.00, in all. The business became very prosperous, and large dividends were made. What Eva got she kept, the Doctor regarding her merely as his trustee.—He lost his health, mental as well as physical, and consequently power to attend to business.—While out of his mind, his hand, unconsciously to himself, slew one of his attorneys, —Strong. While in jail awaiting trial, and in the hospital for the insane, whither he was committed by the Court after acquittal, his trusted wife, Eva, now the president of the corporation-appellant, determined to rid herself of her non-producing husband by means of a divorce, and seize the property for her own benefit. She did so. The mind of the Court below was attempted to be poisoned

by the unnecessary and unjustifiable exhibition of the ghastly indictment for murder, and on an ex-parte application for a restraining-order; but the scheme failed, and after elaborate argument, the decree was rendered—that now appealed from.

This affords the key to her actions. She is the real appellant. The guise of corporate title cannot avail.

What Claim is there to a Reversal?

The evidence is overwhelmingly against such claim.

(*To guard against a confusion of ideas, an important fact must be borne in mind.*—*While three trade-marks are mentioned in the testimony*, ONE, *to wit, the representation of "a man falling in a fit," is* not *in controversy.*)

What is involved?—The decree from which this appeal is made (*pp.* 151 *et seq.*) plainly shows, to wit:—"the trade-mark consisting of the words and letters, S. A. Richmond, M. D., and the portrait of said S. A. Richmond, surrounded by the representation of four globes," etc. borne "upon the bottles, labels, wrappers, or cartoons, of the medicine known as Samaritan nervine, etc.—This accords with the pleadings and evidence.—An accounting of profits was waived.

The First Question is—Who first adopted the said two trade-marks?—Dr. Richmond, for himself in his separate business. He was about to abandon his interests in the corporation, the Medical Company, not a cent's value of property in which had been contributed except by himself, and in December, 1883, he gave notice to the said corporation that it must fail, and on a sale of it he expected to be able to buy the name and resume business as the Dr. S. A. Richmond Medical Company, and had designs made to correspond with the hoped-for transfer.

(P. 120.)—An assignment was made on or about the 13th day of May, 1884, to one John F. Tyler for the benefit of creditors of the Medical Company; and it was bought for $25,000.00 by James, the brother of the Doctor.—The latter leased it, and resumed business on his sole account, on or about July 12, 1884, in Chicago, under the name of the "World's Medical Association;" and so continued until November, 1884. (P. 35.)—He was the first to adopt the two trade-marks involved; by which is meant, the only way by which a trade-mark can be adopted, the actual placing of the symbols on goods for sale in the market.—On *p.* 139 of the record is the question, "Where did you find that market, and what do you mean by the term?"—"I found that market in the United States, Canada, England, Scotland, Ireland, and other places throughout the world." He adopted and affixed his portrait in divers forms as trade-marks, viz., on cartoons, bottles, and with and without four globes. That made the marks his own property. That was after the Medical Company assigned.

How is this point established outside the testimony of the appellee? By clear evidence.

James A. Richmond, late president of the corporation-appellant, and still a stockholder in it, testifies (*p.* 28):—About the first of December, 1883, the Doctor informed him that he intended to sever his connection with the Medical Company, and "start a new business alone and not connected with said company," and intended to have large bottles made, cartoons with the four globes and portrait. He continues, (*p.* 29), "in two or three days after the said assignment was made there was received by the said Dr. S. A. Richmond, at St. Joseph, Missouri, a box which came by freight from the Novelty Paper Box Company, of Philadelphia, Pa.; that said Dr. S. A. Rich-

mond opened said box in the presence of this affiant, and it contained a sample lot of caddies or cartoons; that said caddies or cartoons did have Dr S. A. Richmond's portrait printed on the front of each of them, and his picture or portrait surrounded by four globes printed on the back of each of them."—James while president of appellant swore (*pp.* 27, 28, 29), in the most clear and explicit language, that the portrait trade-marks were not adopted until after the assignment by the "Dr. Richmond Medical Company," and that said company, of which he was an officer, never used them, and that they "never were a part of the assets of said company" and never were used by it as trade-marks. (P. 29.)—Question by Mr. Butterworth (p. 141).

"Q. Then, if I understand you, the company had adopted these changes—that is, had adopted the large bottle and the trade-mark of a portrait of Dr. Richmond—but had not sold medicine upon the market put up in those bottles and with the trade-mark just mentioned attached?" A. "The Medical Company, never." (*P.* 142.)—The bottles never came until after the assignment was made. (*P.* 142.) . . . I knew he (Dr. R.) sent for the bottles, and paid for them out of his own money. (*P.* 143.)—I turned over but what I bought—of a man falling in a fit. I never claimed to be the owner of the trade-mark in controversy . . . I mean the picture of my brother, Dr. S. A. Richmond." (*P.* 145.) . . . None of the new bottles or cartoons were used up to the time of the assignment." (*P.* 116.)

Now let us read from the record:—"He further said that he never sold the trade-marks of the portraits of the Dr. and of the four globes surrounding the Dr.'s portrait to the Nervine Company, the appellant. He says there was a written lease. He saw it in June of this year

[1891]—that the Dr. thoroughly searched for it, but could not find it . . . the company was insolvent because it could not pay the bill or bills presented by Hubbard for advertising . . . all Tyler, as assignee, sold him, transferred to him in pursuance of his purchase, was the formula and the right to make the medicine, and the trademark of "a man falling in a fit." (*P.* 118.)—There is much other evidence in the record to the same effect.—This is in strict accordance with the sworn statements of the present appellee.

(In the testimony of both S. A. and J. A. Richmond can be found reasons for slight variations on immaterial points, while testifying, long before, for use in the Patent Office case, as due to being confused by Mr. Butterworth's questions, or because of not clearly apprehending the question propounded.) (See pp. 32, 121.)

The erroneous statements made by some witnesses that the former Medical Company had used the portraits of the Doctor is easily accounted for. He having given notice of his intention, and of his intention to get out new bottles and cartoons, before he had actually removed from the place of its business (*p.* 28), by mistake the articles had been brought thither, and for that reason it might have been thought, and naturally so, that they belonged to the company.—But Draut was not a person in doubt. He knew why he had made a statement to the direct contrary.—Mr. Seneca W. Taylor, attorney for a Mr. Powell, who had bought the effects, under an assignment that the Court had subsequently set aside, brought a replevin suit to recover the property to which he supposed himself entitled. Mr. Taylor, a witness of intelligence, and, judging from his testimony, one of great veracity and high character, went to the place of business of the late Medical Company; and he says: "it was there that I saw the latter

cartoons with the four globes and the picture of Dr. Richmond, and, if I remember correctly, also some bottles, with, I think, a picture of Dr. Richmond blown in. These were not replevined; and it was stated to me by Dr. Richmond and his principal clerk that they were not included in the assignment; that they had been obtained since, and belonged to Dr. Richmond." (P. 87). . . . As to the said principal clerk.—"My recollection is it was Michael Draut." . . . "Draut was there and pointed out the cartoons which Dr. Richmond claimed were his, and he assented to it, . . . and, of course, the question I was interested in was to get Mr. Powell's goods, and those goods were pointed out to me as not belonging to that lot." —"Pointed out by whom?" "By both the Doctor and Mr. Draut. . . . I have reference to the cartoons having the four globes, and the Doctor's picture, and the bottles with the Doctor's picture blown in." (P. 88.)

There is much more evidence which shows that this statement is fully worthy of belief.

Now comes the history of a most perfidious act, one that removes the least doubt: It admits a lack of ownership in the "Dr. S. A. Richmond Nervine Company," the appellant.—

In January, 1886, Dr. Richmond became insane, and consequently disabled from business, and for the cause stated, in June of that year he was in jail, and when acquitted on account of insanity, by order of the Court he was consigned to the asylum for the insane. He did not become discharged therefrom until in or about January, 1889. No conservator was ever appointed for him. Having again become sane, he wished to regain his liberty. Mr. Taylor, as counsel, went with Mrs. Richmond to the Insane-Asylum. The lawyer wished to get a formal dis-

charge, and says he, "and the superintendent wanted to know of me if she would sign a request, and I told him she had declined." (P. 105).' Why did she object?—She said that she held the stock and intended to keep it.—On November 26, 1887, while the Dr. was a fugitive in Illinois, he having escaped from the asylum, an almost incredible thing was done by the appellant, or to be precise, by Eva E. Richmond and the man Draut, who virtually constituted the corporation, now the appellant. The devoted husband of one, and the benefactor of the other, was to be slain in the house of friends (?). It should be remembered that Dr. Richmond's books were kept from him, and this one was not even seen by him after his escape from the insane asylum.—Let the record speak, (*pp.* 78, 79).

"ST. JOSEPH, MO., *Nov. 26th*, '87.

A special meeting of the board of directors of the Dr. S. A. Richmond Nervine Co. was held this day at the company's office.

Present: Eva E. Richmond, vice-president, and M. J. Draut, sec'y of the company.

Absent: James A. Richmond.

On motion of Eva E. Richmond, the annexed cut, &c., was adopted as a trade-mark of the Dr. S. A. Richmond Nervine Co., and Mr. Draut, secretary of the company, was, and is hereby, instructed and authorized to apply and sign papers, &c., for having the above trade-mark duly recorded or patented.

The trade-mark consists of a vignette of Dr. S. A. Richmond with the words 'trade mark' printed in small capitals, the former on the right and the latter on the left.

There being no further business, the meeting adjourned.

M. J. DRAUT, *Sec'y.*"

————————, *Vice-Pres't.*"

Accordingly it went through the form of registration,

on March 6, 1888. In the sworn "Statement," Draut swore that the said trade-mark was adopted nearly six months before the said company had existence. . . . The bread-winner was divorced by his said wife, Eva. (P. 48.)

Thus it was that the *two* conspired, in the absence of the president, the only other member of the corporation. —Is it to be wondered at that he retired?

WHEN and HOW, did the CORPORATION-APPELLANT acquire a License to use the Portrait Trade-Marks?

At this time, and in this way.—In pursuance of his long-cherished purpose of self-protection, Doctor Richmond caused a new corporation to be organized under the laws of Missouri, and established it at St. Joseph, Mo.—It consisted of three confidential persons, James, his brother, and two of the Doctor's clerks. They were to be officers, directors, and shareholders. The nominal stock was $2,000.00; the number of shares twenty. James took eighteen, and each of the other two one share. The Doctor caused James to transfer fourteen of the shares held by him, to Eva, to be held in trust for her husband, the Doctor. Not one of the shares was ever paid for, except by James the purchaser from the assignee, Tyler, who transferred the outfit, the trade-mark of "a man falling in a fit," the formula of the medicines, and the good-will of his business, so to be established.—The Doctor gave a license to use his two portrait trade-marks, now in controversy, and his services in compounding the medicines. To assure a steady income, he was to receive therefor the sum of $200.00 per month, and in addition all the medicine that he might require for his private practice —amounting in the whole to about $450.00 per month.

ANIMUS OF EVA E. RICHMOND, the president, but the soul and almost the body of the appellant-corporation.

In her anxiety to succeed in this suit, she had made it a personal matter. As a dramatic feature, without excuse, and without it being involved in the case, she produced in the Court below, and on the files of this Court, the indictment for murder against her husband. She has testified several times that he never was insane, although that was the ground of his acquittal. What does this imply?—She says that "The Doctor received all the benefits while he managed the business; witness never received any dividends. The Doctor collected it all as her husband and as her agent. (P. 148).—She was vice-president on June 23, 1885, when she received a dividend of $3,500; on March 3, 1888, one of $17,415.30; on November 24, 1888, $5,600; on January 6, 1889, $1,450.40; on June 29, 1879, $10,000 (on it was paid $4,620.92) = $27,-965.70 for dividends alone.

She had received from her father in April, 1885, a farm which was sold for $1,700.00, but the Doctor had sold it, and invested the whole amount in insurance for the benefit of herself and children. (*P.* 82). She holds a homestead in her own name, and worth (it is thought) $25,000.

She says that he ran off, taking the money with him. (P. 148).—Let this be analyzed. When she received the dividends, for nearly all the time he was in jail awaiting trial, in the insane hospital, or a fugitive from the State, How could he possibly have taken it? The fact remains that he never returned. These are mere scraps of information glanced at during a cross-examination, but they are sufficient to illustrate. She testifies that her husband never was insane, and yet she was willing that he never should be released.—Mr. Seneca W. Taylor, (P. 103) says that he visited St. Joseph, in March, 1888, to try to get a release or discharge for Dr. Richmond. He says:

"Mrs. Richmond said at that time that if the Doctor got

out he would want to claim and run the business."—"Q. And told you that she would not ask, and tried to prevent his discharge?" "A. Yes, sir. I tried to persuade Mrs. Richmond that it was wrong that this should stand over his head; that it was a misuse of the law, when the man was, as I believed, perfectly sane; but she declined to do anything, and said she was so advised by her attorneys." (102).—"I talked with Mrs. Richmond while there, almost constantly, because that is what I was there for, and did everything I could to try and persuade her to do it. I said to Mrs. Richmond there, that there was no way on earth that she could prevent Dr. S. A. Richmond from using his name and those cartoons in connection with the making of the nervine medicine . . . there was not any question in my mind but what the Doctor could start an independent business, using his own name, and no law on earth could prevent it, and the best way was to adjust things, and not fritter it away and squander it in litigation." (103).—Yet, so far as appears throughout this case, Dr. Richmond was kind to his wife and family.

The late wife, Eva, in justification of her conduct, has persistently asserted that her husband was not insane. In that she does not agree with the excellent and Christian gentleman, Seneca W. Taylor (*P.* 99), and other lawyers. There was still another lawyer, Col. Strong, as he is called, in whose pocket, when he was lying dead, was found a commission of lunacy, in which he had sworn that the Doctor was insane.

As to her claim to be the real owner of the trade-mark, etc., which does not seem to be material to the issue, it may be worth while to look at the testimony, but with a view to test her veracity.—Let us extract from the record:—

On page 113, Miss Mattie Richmond says: . . . Eva said the Nervine Company was a success. I mentioned that her father was wealthy. ' Eva said, the Dr. made all we have out of the nervine business; that he never got a dollar from her father; said she had the property where they live in her name, but would transfer it back when the Dr. wanted it; the Dr. had paid for it, and that the Dr. had paid for everything they had; heard a conversation with Dr. Richmond, Eva, and Elick Bragg, in June, 1882. Bragg asked Eva about the company, and she said it was organized to protect the nervine business, and to keep creditors from taking it away from the Dr.; that she, Draut, and Jim held the stock in trust for the Dr. until he recovered financially, and they was to transfer it back at his request. Mr. Bragg also asked her about the Doctor's life-insurance, and she told him the Dr. had given her his note for $10,000 without consideration, but he did not owe it, but it was a sham."

Eva F. Thompson, (*p.* 114):—Heard the conversation at Bragg's, in June, 1883. . . . was put into their hands to prevent his creditors from taking it until he could make money, and pay off his debts, then they were to transfer it back; have heard Eva say at her home in St. Jo. that she, Jim, and Draut held the stock in trust for Dr. Richmond, and that Eva said her residence was in her name; that the Dr. bought it and paid for it with his own money, and put it in her own name because he was in debt; it was for her and the children; she (Eva) said her father had never helped her any; had never given her anything; that the Dr. had made all they had.

T. A. Richmond (*p.* 114) . . . was present at Mr. Bragg's when Dr. and Mrs. Richmond were there in June; heard Eva say that S. A. Richmond Medical Company was organized, and that Jim and Draut and Eva held the stock for the Dr.

X-ex. . . . said that the Dr. and Eva both said that Mr. Shannon, Eva's father, had not helped them any.

Everett P. Thompson (*p.* 115) . . . Witness asked Eva if the Dr. did not make what they had in St. Jo., and Eva said he did. George Haines (*p.* 115) . . . Eva said that they had paid back Shannon all they had borrowed from him.

A. W. Bragg (*p.* 115) . . . Same purport. X-ex. She said that the company was organized just to keep off the creditors until after Dr. Richmond could pay them off; then Jim and Eva and Draut were to transfer the stock, etc., back to the Dr.

John A. Field (*p.* 115) . . . druggist: bought nervine from Dr. Richmond, in July and August, 1884, to be sold for the Dr. on commission. The cartoons had portraits of Dr. Richmond on. Witness identifies the cartoons and caddies.

J. J. Clements (*p.* 116) . . . Dr. had small property and money before his marriage.

A. N. Bragg (*p.* 116) . . . Dr. Richmond loaned his [witness's] father $5,000.00 in 1881, which his father returned the next spring.

James A. Richmond (*p.* 116) . . . Witness, Albus, and Draut, met and agreed to organize the Dr. S. A. Richmond Medical Company, for the Dr.'s benefit; says that they paid nothing for the shares of stock that were issued: Albus and Draut got one each; says the company bought the formula, trade-mark, and good-will of the business — for $5,000.00 — a mere form; . . . in trust for Dr. Richmond. . . . Dr. Richmond said to witness that if he got a settlement with Hubbard he would lease us those trade-marks—that is, the globes around his picture, his portrait, etc., . . . the transfer of the trade-mark, formula, and assets and effects, a mere

form. Witness said that when the Dr. was insane (which was in 1886), Eva (Mrs. Richmond) telegraphed for witness to come to St. Joseph, and that while there witness asked her what had become of the stock in the S. A. Richmond Medical Company. She said she had it in her trunk, and was "holding it in trust for Doc., as she had always done before." Albert Bragg was present when this conversation took place. . . . In 1881 and 1882 he asked Eva if they had made all they had off of the nervine business, and if her father had helped them, and she said her father had never helped them any. . . . Two or three years ago, Eva said that she had paid off a note to her mother the Dr. was owing a good while; said she got the money out of the nervine business. . . . He had loaned out $10,000; it was loaned in his wife's name. . . . Dr. S. A. Richmond Medical Company never used the portrait of Dr. Richmond and the four globes surrounding the portrait. Never had any interest in the Chicago business, nor any of the trade-marks, etc. . . . Never sold the portrait trade-marks, but that the Dr. leased said trade-marks to the nervine company . . . a written lease. . . . Eva told him that the Dr. did not owe her anything; that she held the stock she held in trust for him. . . . Proves that the Dr. notified Nervine Company to quit using the portrait trade-mark. Draut said that the Dr. had notified us to quit using the trade-mark.

An Attempt to Blot the Character of Appellee.

This has been made in a weak manner, seemingly actuated by malice, by one or both the conspirators.—How has the hounded man responded? He has called thirty or more men of high standing in his own neighborhood, who would be the most likely to know all about him; and,

without the least hesitation, they all have given him a reputation for truth and veracity.—But it was hardly worth while, for he stands unimpeached. (*Pp.* 122 *et seq.*)

As to who Paid for the Articles.

Stevenson (p. 110), manager of the Novelty Paper Box Company. The order was given in Dr. Richmond's own name. Witness knew no other party in the transaction. (Describes the portrait trade-marks, etc.) The Doctor told witness that he intended to go into an individual business, in Chicago, under the name of the "World's Medical Association."—"First shipment of those caddies or cartoons was May 2d, 1884; that it required about three weeks to deliver said goods in St. Joseph, or Kansas City." (P. 110.)—As to the bottles, Mr. Lilly, of firm of Wm. McCully & Co., of Pittsburgh, says, Bottles were to be shipped to Dr. S. A. Richmond. He replied stating assignment, and asked us to hold the bottles, and store them. The bottles were stored in St. Joseph, and remained until the 22d of July, when we forwarded them to the "World's Medical Association, Chicago. Our firm dealt with Dr. Richmond."—This is corroborated by appellant's witness, Draut. (P. 67.)—There was also an order placed for a large amount of bottles (about a carload), which were *en route* at the time of the assignment. They were not received by the company, but were *en route* at the time of the assignment." . . . Hugo Vanehan, engraver of the portrait of the picture of four globes about the portrait of Dr. Richmond; completed about March 1, 1884; all paid by Dr. Richmond.

But this is *not relevant to the issue.*

It matters not who handed out the money to meet bills for engravings, bottles, cartoons, which bills the Doctor

was to properly adjust. Sometimes he gave his own check, or, if absent, his clerk may have given some of them for the corporation. There was a plenty of the Doctor's own money to settle them, and he did settle them. (See *p.* 120; full and explicit.)

Nor does it signify as to the good-will of the business of the appellant. The decree does not touch it.

Could Such Personal Trade-marks be Assigned?

In Hill *v.* Lockwood, 32 Fed. Rep., 389, it was said: There are trade-marks to which the characteristic of personal proprietorship attaches, because they assert to the public that some particular person has given his special skill to the production or selection of the article they cover.—Leather Cloth Co. *v.* American Leather Cloth Co., 11 H. L. Cases, 544; Hoxie *v.* Chaney, 143 Mass., 593; 58 Am. Rep., 149; Holt *v.* Menendez, 23 Fed. Rep., 149, 839, 869.

If personal, designating a particular person and skill, it cannot truthfully be used by any other person, and consequently be assigned.—Fish Brothers Wagon Co. *v.* La Belle Wagon Works, 82 Wis., 546; Connell *v.* Reed, 128 Mass., 477; Manhattan Med. Co. *v.* Wood, 108 U. S., 218.

When the excuse is that the owner permits such use, the excuse is disposed of by affirmative action to put a stop to it.—It is no more than a revocable license. Menendez *v.* Holt, 128 U. S., 514.

In Kidd *v.* Johnson, 100 U. S., 617, the Court held that Pike did not place his interest in the trade-mark in the concern as a part of the capital-stock. He allowed the use of it on packages containing whiskey manufactured by them; but it no more became partnership property from that fact than did the realty itself, which he also owned,

and on which their business was conducted. He was engaged in the same business before the partnership as afterwards, and taking his clerks into partnership changed in no respect, beyond its terms, their relation to the individual property. Their acts, moreover, showed that they claimed no interest in the trade-mark.

When two persons associated in business for the manufacture and sale of a commodity (one having been the originator or inventor thereof)—jointly adopted a trade-mark for it,—equally entitled, though one received a portion of the profits as a salary, provided the trade-mark was adopted in conjunction. Taylor *v.* Bottim, 5 Sawyer, 584.

As to the name of the medicine.—The decree does not touch that, unless it should bear the trade-marks in this controversy. It is not patented. Any one in the secret of its composition, or a hundred such persons, may make and vend it; but no other than the appellee has a right to use his trade-marks on merchandise not of *his* manufacture.

Is This Appeal Properly Before the Court?

If this point had been perfectly clear, and it could not appear to be trying to gain undue advantage, the attention of this Court would long ago have been invited to it.

Was this appeal not limited in terms? Should not the appellant have sought in time to have any irregularity duly corrected by this Court?

The condition of allowance of the appeal was: "entering into a bond to the defendant in the penalty of one thousand dollars, to be approved by the clerk of this court within sixty days from"—the date of the decree.—Did not the appellant accept the limitation? What the law meant was a proper bond, in accordance with the

statute, approved by a Justice or Judge of the court; or, while the appeal was alive, the action of a Justice of this Court.

The power to approve the bond could not be delegated to the clerk.—O'Reilly *v.* Edrington, 96 U. S., 724.—First Nat. Bank of Omaha *v.* City of Omaha, *ibid.*, 737.

Although an appeal is asked for in open court, if the security is not taken until after the term, "a citation should be asked to bring in the parties, unless they voluntarily appear, for, until the security has been accepted, the allowance of the appeal cannot be said to have been perfected."—Sage *v.* Railroad Co., 96 U. S., 712.

Where the transcript showed that no appeal-bond was taken nor approved by the Judge who signed the citation in the cause: appeal dismissed.—Boyce *et al v.* Felix Grundy, 6 Peters, 777.

More than the time for appeal has elapsed, and no bond (in legal effect) has been filed.

(The brief for the appellant was not served on counsel for the appellee until the day of going to press, for which reason it has not been answered as well as it might have been.)

In case the Court should determine that it has jurisdiction, in view of the point heretofore made, it is prayed that the decree may be affirmed.

WM. HENRY BROWNE,
Counsel for the Appellee.

WASHINGTON, *April*, 1895.